

Malcolm McAlpine

McGowan v Stutesman, et al.

October 18th, 2017



CC REPORTING AND VIDEOCONFERENCING

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Eugene, OR 97401
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Eugene Division

RONDA MCGOWAN, Personal)
Representative for Estate of)
Brian Babb, LEE BABB, CONNOR)
BABB, by and through Guardian)
ad litem, STEPHANIE WOODCOOK,)
KAYLEE BABB,)
)
Plaintiffs,)
v.) No. 6:17-cv-00424-TC
)
WILL STUTESMAN, OFFICER GROSE,)
OFFICER PIESKE, Sgt. MCALPINE,)
CITY OF EUGENE, a municipal)
subdivision of the State of)
Oregon, JANE DOE CALL TAKER,)
John and Jane Does 1-10,)
)
Defendants.)

DEPOSITION OF MALCOLM McALPINE

October 18, 2017

Wednesday

2:14 P.M.

THE VIDEOTAPED DEPOSITION OF MALCOLM

McALPINE was taken at Harrang Long Gary Rudnick, 360
East 10th Avenue, Suite 300, Eugene, Oregon, before
Christine Oljace, CSR, RPR, CRC, Certified Shorthand
Reporter in and for the State of Oregon.

APPEARANCES

For the Plaintiffs:

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Eugene, Oregon 97401
541/485-0220
BY: MR. JENS SCHMIDT
jens.schmidt@harrang.com

Also Present:

LEE BABB

MS. JAMIE IBOA

NATHAN PIESKE

WILL STUTESMAN

MATTHEW GROSE

Videotaped by: ROBERT CARRICK

Reported by: CHRISTINE OLJACE, CSR-RPR

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Nos. COE 000513 - COE 000514

1 THE VIDEOGRAPHER: We are on record.
2 This is the video deposition of Malcolm McAlpine.
3 Today's date is October 18, 2017. The time is
4 2:14 p.m.

5 This is the case of Ronda McGowan, et
6 al., Plaintiffs, versus Will Stutesman, et al.,
7 Defendants, Case No. 617-cv-00424-TC. This case is
8 pending in the United States District Court for the
9 District of Oregon, Eugene Division.

10 Would all present please identify
11 yourselves, beginning with you, Mr. McAlpine.

12 THE WITNESS: Malcolm McAlpine.

13 MS. BURROWS: I'm Michelle Burrows,
14 Plaintiffs' attorney.

15 MR. SCHMIDT: Jens Schmidt for the
16 defendants.

17 THE VIDEOGRAPHER: Okay. The court
18 reporter will now swear in the witness.

19
20 MALCOLM McALPINE,
21 having been first duly sworn to testify the truth,
22 the whole truth, and nothing but the truth, was
23 examined and testified as follows:

24 ///

25 ///

1 EXAMINATION

2 BY MS. BURROWS:

3 Q. Sergeant McAlpine, could you state your
4 name for the record, please.

5 A. Malcolm McAlpine.

6 Q. Sergeant McAlpine, this is -- is it
7 McAlpine?

8 A. McAlpine, yeah.

9 Q. All right. You will find that I can
10 strangle nouns better than anybody else --

11 A. Okay.

12 Q. -- so feel free to correct my
13 pronunciation at any time.

14 A. Okay.

15 Q. This is the time set for your deposition
16 in a federal civil rights lawsuit brought by the
17 Estate of Brian Babb. And have you ever had your
18 deposition taken before?

19 A. Never.

20 Q. Well, you are in for a treat. So this is
21 like court testimony except that it is somewhat more
22 informal, as you can see from the room here.

23 A. Sure.

24 Q. This is my client, Lee Babb. He is the
25 father of Brian Babb.

1 MR. BABB: Hi.

2 BY MS. BURROWS:

3 Q. He will be sitting in here today and
4 tomorrow.

5 A. Okay.

6 Q. A deposition is your testimony under oath
7 being recorded by a court reporter, and at the end
8 of the proceeding, there will be a transcript
9 created. And you do have the right to read and
10 review that transcript if you so choose. Most of
11 the officers have availed themselves of the right to
12 read and review, so I am assuming that your lawyer
13 will do the same today.

14 If at any point in time you don't
15 understand my question, if it is inarticulate or you
16 just don't understand what I am trying to get at,
17 please ask me to clarify.

18 A. Okay.

19 Q. It is really important to the best of our
20 ability, you and I today, that we understand each
21 other so that we can have a fair and accurate
22 transcript of today's proceedings. Like I said,
23 this is like court testimony.

24 So in your years of service to the City,
25 have you testified in court before?

1 A. Yes.

2 Q. So the same general parameters apply
3 except that there is no judge present here, so if
4 there are evidentiary problems in the future,
5 Mr. Schmidt and I will take care of that with the
6 transcript with the federal judge later. But
7 otherwise, generally speaking, even if there are
8 objections, you probably are expected to answer the
9 question unless your attorney tells you otherwise.

10 There are opportunities here for you to
11 take a break should you need it. The only thing
12 that I ask is that if you want to take a break, that
13 you wait and answer the question, if there is one
14 pending, and then we can take a break. And
15 Mr. Schmidt has been really good about waiting for
16 your answer and then asking for a break, but if you
17 need a personal break, you don't have to tell me
18 why. Just ask for a break and we will do that.

19 A. Okay.

20 Q. All righty.

21 One other thing -- a couple of the other
22 officers I have deposed -- and you are the third to
23 the last in about two and a half weeks of
24 depositions here. A couple of the other officers,
25 who are very good witnesses, anticipate my question

1 before it is asked and will talk over the top of the
2 question, and while I appreciate the intuitive
3 nature of the witness, it makes it difficult for the
4 court reporter. So we need to speak one at a time.
5 I don't know if you have that inclination, but if
6 you do, she or I will probably jog you about slowing
7 down and waiting for the question.

8 Vice versa. If I interrupt your answer --
9 I try not to, but I will try and be patient and let
10 you finish your answer before we move forward to the
11 next question.

12 Any concerns about what I have told you?

13 A. No.

14 Q. So I see that you are in uniform. Are you
15 on duty today?

16 A. I am in training today.

17 Q. What does that mean?

18 A. It means I am part of the SWAT team, so it
19 is one of our assigned training days.

20 Q. And are you in a hurry to get back to
21 that?

22 A. No.

23 Q. So you have no other concerns that would
24 otherwise occupy your mind today as we talk?

25 A. No.

1 Q. Have you reviewed any documents in
2 preparation -- and I -- let me strike that.

3 Have you reviewed anything in preparation
4 for today's deposition?

5 A. Yes.

6 Q. What have you reviewed?

7 A. The reports related to the case.

8 Q. Have you reviewed your statement that you
9 gave to Officer -- Detective Crollly?

10 A. I believe I gave it to the LCS Chad
11 Rogers.

12 Q. Well, we will get to that in a second.

13 A. Okay.

14 Q. So you did give at least one statement.
15 Is that correct?

16 A. Yes.

17 Q. Do you recall giving any others besides
18 the one that you reviewed?

19 A. The internal affairs interview.

20 Q. Okay. Who was the subject of the internal
21 affairs?

22 A. Officer Stutesman.

23 Q. Is that separate from the shooting review
24 board review?

25 A. No.

1 Q. Okay. Anything else you have reviewed?

2 A. I listened to the audio tapes.

3 Q. And which audio tapes have you listened
4 to?

5 A. The radio transcripts or the radio
6 dispatch.

7 Q. And what period of time did you listen to?

8 A. Over the last couple weeks I listened to
9 it.

10 Q. Okay. Let me -- that was one of those
11 examples of a really poorly asked attorney question.

12 The dispatch records that you reviewed,
13 what dates did they cover?

14 A. They covered this incident.

15 Q. Okay. On March --

16 A. The date of this incident.

17 Q. Okay. March 30th, 2015.

18 A. Uh-huh.

19 Q. Was there a particular time period that
20 you listened to of those tapes?

21 A. From dispatch until -- I don't remember
22 how far after the shooting. It was a -- minutes
23 after the shooting, and then that was it.

24 Q. Okay. Approximately a little over an
25 hour, hour and a half maybe?

1 A. I couldn't say for sure, but from the
2 dispatch until a few minutes after the house was
3 finished being cleared.

4 Q. Oh, is that different than after the
5 shooting when the house was cleared?

6 A. It was shortly thereafter.

7 Q. What do you mean by the term "when the
8 house was cleared"?

9 A. After officers had made sure nobody else
10 was in the house injured.

11 Q. So -- and after the house was cleared,
12 were there detectives then investigating?

13 A. I left the scene then. There were lots of
14 detectives on scene, so I don't know what that time
15 frame was.

16 Q. Okay. So the period of time and the
17 dispatch calls you listened to started from about
18 the time that you were dispatched to the call --

19 A. No.

20 Q. -- until --

21 A. I dispatched myself to the call.

22 Q. Okay. Well, we will look at the dispatch
23 records in a second and maybe we can narrow down the
24 time frame a little bit.

25 A. Okay.

1 Q. So my -- you are the latest in a long line
2 of officers who were at the scene that I have talked
3 to, so I may not have as many questions for you or I
4 may not want to go into a lot of the other areas
5 that I went into with other officers, so I don't
6 plan on keeping you an inordinate amount of time
7 today. Do you have to go back to duty after this?

8 A. No.

9 Q. Okay.

10 MR. SCHMIDT: Can we take a break?

11 MS. BURROWS: Yes. Did I ask a
12 controversial question?

13 MR. SCHMIDT: Oh, yeah.

14 THE VIDEOGRAPHER: Let me go off. The
15 time is 2:22. We are off record.

16 (Recess: 2:22 to 2:23 p.m.)

17 THE VIDEOGRAPHER: Okay. We are on
18 record. Time is 2:23.

19 BY MS. BURROWS:

20 Q. Mr. Schmidt said you had something you
21 wanted to add.

22 A. Yeah. As well as reviewing my report, I
23 reviewed the other reports as well as the aerial
24 photographs and the use of force review board's
25 summary.

1 Q. What other reports did you review besides
2 yours?

3 A. It was a packet from the whole case. I
4 don't know specifically each one.

5 Q. Did you read Officer Stutesman's
6 statement?

7 A. Yes.

8 Q. Did you read Officer Pieske's statement?

9 A. Yes.

10 Q. Did you read Officer Kidd's statement?

11 A. Yes.

12 Q. Any -- do you recall any other names of
13 officers?

14 A. Officer Barnes. Officer Grose.

15 Q. Warden?

16 A. Warden.

17 Q. Clark?

18 A. Farley and Clark.

19 Q. And DeWitt?

20 A. Yes, DeWitt.

21 Q. When was -- when did you do this review?

22 A. Over the last couple weeks.

23 Q. Okay. And prior to your review for
24 today's deposition, had you reviewed any of those
25 reports?

1 A. Not for a long time.

2 Q. When was the first time you remember
3 reviewing all those reports?

4 A. When we prepared for our debrief of this.

5 Q. About what time was that?

6 A. Six months after the incident or so.

7 Q. Okay.

8 A. I don't remember the exact date.

9 Q. And you remember the incident we are
10 talking about was on March 30th of 2015?

11 A. Uh-huh.

12 Q. Okay. You have to answer out loud as
13 well.

14 A. Okay.

15 Q. That is one thing I didn't tell you
16 before.

17 A. Okay.

18 Q. Nodding and shaking doesn't always make it
19 accurately into the transcript.

20 A. Okay.

21 Q. Okay. Appreciate it.

22 You also said that you read -- that you
23 gave a statement -- used to use the term "internal
24 affairs."

25 A. Uh-huh.

1 Q. And I think you told me that that was the
2 same as the shooting review board?

3 A. I gave one to the internal investigation
4 of -- at the department --

5 Q. Okay.

6 A. -- of what exactly I had done and why, and
7 how they used that and what -- I don't know
8 positively what -- who had access to that for which
9 part of the review.

10 Q. And because I want to make sure I
11 understand, is that separate than the statement you
12 gave to Detective Rogers?

13 A. Yes.

14 Q. And have you seen a written version of the
15 statement you gave to the shooting review board?

16 A. I didn't see a written one, no. I have
17 heard an audio portion of it.

18 Q. When was the last time you heard the audio
19 portion of your statement to the shooting review
20 board?

21 A. When it came out in the Register-Guard.

22 Q. And when you say it came out in the
23 Register-Guard, was there a newspaper article on --

24 A. Yeah, and a link on the website.

25 Q. And was the recording on that link?

1 A. Yes.

2 Q. Were you surprised that your statement
3 made it to the media?

4 A. No.

5 Q. Okay. You knew that that was going to
6 happen?

7 A. Yes.

8 Q. Now, I have not seen that audio link.
9 Were there other officers' statements on that link?

10 A. I don't remember.

11 Q. Was yours the only recorded statement that
12 made it to the Register-Guard?

13 A. I only remember mine.

14 Q. Okay. Did you read -- there were a number
15 of reports about this shooting shortly after the
16 shooting in the Register-Guard and I think other
17 places. Do you remember reading those media
18 reports?

19 A. I read a smattering of them, a few of them
20 here and there, yeah.

21 Q. Okay. And did you feel that the reports
22 were accurate with what you remember happening?

23 A. I don't remember which was in each
24 article. I really don't. I just was curious at the
25 time.

1 Q. Okay. Do you remember feeling any of them
2 were not accurate?

3 A. I don't remember --

4 Q. Okay.

5 A. -- exactly how I felt with each one. I --
6 I don't know.

7 Q. Was it interesting to be in the media?

8 A. In our profession, especially in Eugene,
9 we get pretty used to it.

10 Q. Oh, is it? They do a lot of reporting on
11 police activity?

12 A. They sure do.

13 Q. Okay. How long have you worked for the
14 Eugene Police Department?

15 A. Since 2004.

16 Q. And did you work at another department
17 prior to that?

18 A. I did. I worked at the Sweet Home Police
19 Department and the Lane County Jail.

20 Q. When did you work for Sweet Home?

21 A. Between 2001 and 2004.

22 Q. And what position did you hold at Sweet
23 Home?

24 A. Police officer.

25 Q. Patrol?

1 A. Yes.

2 Q. And you said you worked for the Lane
3 County Jail?

4 A. Uh-huh.

5 Q. When was that?

6 A. That was from early in '01 to late in '01,
7 so I worked there like eight months, I think.

8 Q. Were you at that time a certified
9 corrections officer?

10 A. I don't know, because I went to the -- to
11 the corrections academy, and I had been there for
12 about eight months. And I had finished the
13 training, and I was a solo deputy, but I don't know
14 whether or not, through DPSST, they ended up sending
15 my paperwork to become a certified corrections
16 deputy. I don't remember.

17 MR. SCHMIDT: Does he need to slow
18 down a little bit?

19 THE COURT REPORTER: So far so good,
20 but that's always nice.

21 THE WITNESS: Okay. I'll work on it.

22 BY MS. BURROWS:

23 Q. So Officer, were you a certified police
24 officer when you worked at Sweet Home?

25 A. Yes.

1 Q. Did you go from the jail to Sweet Home?

2 A. Yes.

3 Q. And prior to the Lane County Jail, did you
4 work as a corrections off- -- or a Lane County
5 officer in any capacity anywhere else?

6 A. No.

7 Q. You weren't a reserve officer anywhere?

8 A. No.

9 Q. Where did you graduate from high school?

10 A. Northgate High School in Walnut Creek,
11 California.

12 Q. Warner Creek?

13 A. Walnut creek.

14 Q. Oh, Walnut Creek. Little house on the
15 Prairie?

16 A. Not quite.

17 Q. What year did you graduate in?

18 A. '96.

19 Q. And what did you do between '96 and 2001?

20 A. I went to school for a while. I had jobs.
21 I had a child.

22 Q. Did you ever serve in the military?

23 A. No.

24 Q. Did you get a college degree?

25 A. No.

1 Q. What positions have you held at EPD since
2 you have been working in 2004?

3 A. I have been -- I was a police officer to
4 start. Then I got promoted to police sergeant in
5 2011.

6 Q. So between 2004 and 2011, were you always
7 a patrol officer?

8 A. There were a couple assignments that I
9 had. I was a detective for a short period of time.
10 I worked downtown patrol for a while. I had been on
11 the SWAT team since 2006. I was a defensive tactics
12 instructor.

13 Q. Have you ever been an FTO?

14 A. Yes.

15 Q. Ever on any specialty investigative team?

16 A. When I was on -- in detectives, I was up
17 in property crimes for 90 days. It was a rotational
18 spot. That is it.

19 Q. Okay. And what is your highest level of
20 certification with DPSST?

21 A. Advanced police officer certification and
22 supervisory.

23 Q. Okay.

24 MR. SCHMIDT: Would you read back the
25 last answer?

1 (Record read as follows:)

2 ANSWER: Advanced police officer
3 certification and supervisory.

4 MR. SCHMIDT: Okay. Thank you.

5 BY MS. BURROWS:

6 Q. I understand -- strike that.

7 When did you go -- did you go to the DPSST
8 academy?

9 A. I did.

10 Q. Do you remember what year you went in?

11 A. 2002.

12 Q. After the jail?

13 A. Yes.

14 Q. All right. Did you already have a job
15 with Sweet Home when you went to the academy?

16 A. I did.

17 Q. All right. What made you leave Sweet
18 Home?

19 A. I wanted to work for a bigger agency.

20 Q. And why the jail?

21 A. I was very young and wanted to get into
22 law enforcement.

23 Q. That was an opening that you took?

24 A. Uh-huh. Yes.

25 Q. Yes?

1 Why did you leave Lane County?

2 A. I wanted to be on street patrol, and when
3 you went to Lane County Jail, you had to go through
4 the jail first. At that particular time, it was
5 like eight to ten years before you could transfer to
6 the street, and I wanted to continue my career to be
7 a -- become a police officer, so that is what I did.

8 Q. Okay. Have you ever done any instruction
9 work at DPSST?

10 A. No.

11 Q. All right. Let me give you a little
12 background on what is going on here. This notebook
13 is full of exhibits --

14 A. Okay.

15 Q. -- that we have used consecutively, with
16 one exception I will explain to you in a second,
17 with all of the different witnesses.

18 At the back of this notebook you will see
19 it starts over at 1. Those are exhibits that were
20 used for dispatch and call taker depositions we did
21 in the middle of all of the police officer
22 depositions. The dispatch record I am going to have
23 you look at throughout this deposition is attached
24 as Exhibit 7 at the back.

25 A. Okay.

1 Q. It is not this 7.

2 A. Okay.

3 Q. There is also some aerial photographs that
4 we may rely on that were introduced during
5 witness -- neighbor witness testimony, and I may ask
6 you to identify whether those are similar to the
7 ones you looked at in preparation for today's
8 deposition. Is that okay?

9 A. Yes.

10 Q. All righty. I am going to show you a copy
11 of the statement that you gave after the shooting on
12 March 30th. And what I have heard from other
13 officers is that there is not a report that you
14 wrote but rather a statement given to a detective.
15 Is that correct?

16 A. Correct.

17 Q. And when you reviewed the statement that
18 you gave to Officer -- or Detective Rogers, did it
19 appear to be a fair and accurate version of what you
20 told that officer?

21 A. Yes.

22 Q. Was your statement recorded?

23 A. Yes, I believe so.

24 Q. And have you listened to that recording in
25 preparation for today's deposition?

1 A. I have not.

2 Q. All right. Let's mark this the next in
3 order.

4 (Deposition Exhibit No. 43 marked
5 for identification.)

6 BY MS. BURROWS:

7 Q. Would you take a look at Exhibit 43 and
8 tell me if that looks to be a fair copy of your
9 statement to Detective Rogers, the first three pages
10 at least.

11 A. Okay.

12 It appears to be, yes.

13 Q. And if you will look on the fourth page,
14 and if you look way down at the bottom in the
15 right-hand corner, there is a Bates stamp number of
16 513 on the -- yes.

17 A. Yeah.

18 Q. -- what is -- it says McAlpine Interview,
19 March 30th, 2015, 2101 hours. Is this a different
20 interview than that which is depicted in the first
21 three pages?

22 A. I don't know what this is.

23 Q. Can you look at it and tell me if you
24 recognize it?

25 A. I don't.

1 Q. Have you ever seen this before?

2 A. No.

3 Q. Who were the officers who were
4 interviewing you for the use of force review, if you
5 recall?

6 A. I don't remember for sure.

7 Q. But were they EPD officers?

8 A. I don't remember who did the interview. I
9 don't remember for sure.

10 Q. Okay. So let's take a look at -- here is
11 what I think I want to do. Those last pages
12 starting with 513, let's separately mark that as a
13 different exhibit.

14 (Deposition Exhibit No. 44 marked
15 for identification.)

16 BY MS. BURROWS:

17 Q. Okay. Let's look at 43.

18 A. Okay.

19 Q. And if you need to refer to Exhibit 7 --
20 which maybe I should start there first. Exhibit 7
21 is the dispatch record, and I would like you to look
22 at it for me and tell me when you first dispatched
23 yourself to this call, what time. Maybe I should
24 give you a little explanation, too.

25 As was explained to us in the dispatchers'

1 depositions, this particular format was created when
2 Mr. Schmidt got a prior version that was very, very
3 difficult to read.

4 A. Okay.

5 Q. So they reformatted it, and the first four
6 pages, as I understand it, are really from the call
7 taker and the dispatchers' CAD notations.

8 A. Okay.

9 Q. And then starting at page 4 of 11, where
10 it says Radio Log at the bottom --

11 A. Uh-huh.

12 Q. -- are, generally speaking, the
13 information relating to the location of the
14 different Eugene police officers.

15 A. Okay.

16 Q. So wherever you need to look on any of
17 this, if you could locate where it was that you
18 first dispatched yourself to the Devos Street
19 address on March 30th.

20 A. I -- even with looking at this, I
21 didn't -- I said it on the radio, so whatever time
22 stamp it has on the radio, but I didn't look at the
23 clock, so I don't know exactly what time.

24 MR. SCHMIDT: What is your designator?

25 THE WITNESS: 3 X-ray 31.

1 BY MS. BURROWS:

2 Q. So look for 3 X-ray 31 and where these
3 records say you were first dispatched to the Devos
4 Street address.

5 Maybe I can help you, Officer.

6 A. That would be helpful. I don't see it.

7 Q. If you could take a look at -- it looks
8 like page 5. It looks like 3 X-ray 31 is the third
9 notation down, 5:08:03 p.m.

10 A. Okay.

11 Q. So what does that information tell us
12 besides -- in that entry?

13 A. That if the dispatcher put that I was
14 going en route to that call at that moment, that is
15 when she put it in.

16 Q. Okay. Now, at that point -- and I know it
17 is an approximation.

18 A. Uh-huh.

19 Q. I know that is just when the dispatcher
20 got to notating this information and that, in fact,
21 you may have headed out earlier. What do you recall
22 knowing about the call at Devos Street before you
23 headed out to that address?

24 A. Oh, that there had -- there was a suicidal
25 male in a house. He had a gun to his head, I

1 believe, and he had possibly shot out a window.

2 Q. And where did that information come from?

3 A. Dispatch.

4 Q. Was that something you remember being
5 radioed, or did you read it?

6 A. It was over the air.

7 Q. Over the air.

8 Did you -- and the notations, the CAD
9 notations are the first couple three pages. Let's
10 scan down through page 1. There is a lot of
11 information that is being noted here.

12 If you could read down, from the beginning
13 down, and tell me of those notations which of that
14 information you knew before you went to the Devos
15 Street address. Does that make any sense, what I
16 just asked you?

17 A. It does. It just seems like it would be
18 easier to listen to the tape, because that is what I
19 heard.

20 Q. Well, I am trying to figure out what you
21 remember before --

22 A. Okay.

23 Q. -- you went out.

24 A. Okay. I remember the dispatcher saying
25 that there was a gentleman in the house. He had a

1 gun to his head. Here it says 9-millimeter. I
2 don't recall if that was -- it was that specific.
3 She did say she [sic] has already shot one bullet
4 into a window or somewhere into the house and that
5 the therapist was online with him and was the
6 caller. That is what I remember when I went
7 en route.

8 Q. Okay. If you read further on down, at
9 5:10, it looks like that the suspect is an
10 Afghanistan vet.

11 A. Uh-huh.

12 Q. Do you remember that?

13 A. I don't remember when that came out, no.

14 Q. Do you remember the notation at 5:11:11
15 that the caller didn't hear the shot and told her he
16 shot into the ceiling one time? Do you remember
17 that information?

18 A. They never told us that.

19 Q. They never told you that?

20 A. No.

21 Q. So if it is written here like on page 1,
22 is that -- how is that information, if at all, being
23 translated to you?

24 A. I don't -- I mean, it is put into CAD --

25 Q. Yeah.

1 A. -- but if they don't say it on the radio,
2 I don't know it.

3 Q. Is CAD showing up on your computer in your
4 vehicle?

5 A. Yeah. Some of it is. Some of it is not.
6 I don't know what -- I am not savvy enough to know
7 what CAD details show up and what don't, but I did
8 not know that.

9 Q. Could you explain that answer to me? Not
10 everything on here shows up on your computer?

11 A. I don't know is what I am saying.

12 Q. All right.

13 A. I am not sure what shows up. Looking at
14 this, I could tell you if I had the computer of what
15 was in front of me and that is what showed up, that
16 is what showed up, but just by looking at this, I
17 don't know for sure, because I know that many times
18 in the past information that dispatch has had has
19 not shown up on our computer.

20 Q. So if you are out of your vehicle,
21 obviously you can't see what is on the computer
22 anyway?

23 A. Correct.

24 Q. So you would depend upon that information
25 being relayed over the radio to you?

1 A. Yes.

2 Q. Okay. Now, besides the things that you
3 already told me, is there anything else you recall
4 learning about this call prior to going to the Devos
5 Street address?

6 A. Not that I can remember.

7 Q. All right. Were you a sergeant on that
8 day?

9 A. Yes.

10 Q. And I talked to Sergeant Vinje just a tad
11 bit about this, but can you tell me, when you
12 respond to a scene, as a sergeant are you the
13 commander of that scene?

14 A. Yes.

15 Q. All right. And I know Sergeant Vinje was
16 a sergeant at that time as well.

17 A. Yes.

18 Q. Were you the -- and if I am not using the
19 right term, please provide the correct one for me.

20 A. Uh-huh.

21 Q. Were you the incident commander of the
22 Devos Street incident?

23 A. I was. I was. When he arrived, we made
24 decisions in conjunction with each other. We were
25 in close proximity.

1 Q. Is that a procedure with Eugene Police
2 Department if there is more than one -- and I will
3 just use sergeant --

4 A. Uh-huh.

5 Q. -- and we can talk about other ranks in a
6 second. But if there is two sergeants at a critical
7 incident or complicated incident, who -- would you
8 typically share command positions?

9 A. Sometimes. It kind of depends on the
10 tenure of the sergeant. Sergeant Vinje and I were
11 actually promoted during the same sergeant process.
12 We also were sergeants on the SWAT team together, so
13 working together with me and him was very normal for
14 us.

15 Q. Okay. And you were comfortable, then,
16 sharing command with Vinje?

17 A. Absolutely.

18 Q. Now, Sergeant Vinje explained briefly --
19 and he didn't go into a lot of detail -- how you
20 divided up those command duties. Do you remember if
21 there were particular areas of command that you were
22 responsible for?

23 A. I remember that I was responsible for -- I
24 specifically asked him to call our lieutenant when
25 he was on his way to deal with the BearCat -- the

1 armored vehicle coming out, to make that
2 notification, because I was trying to listen to the
3 radio and allocate resources.

4 I don't remember which one of us -- I
5 think we had a brief conversation about who was
6 going to be in charge of the hasty team, which would
7 be a team that would maybe have to deal with
8 something immediate, and then how we were dealing
9 with the surrounding area. If I remember right, I
10 was going to deal with kind of the hasty team, and
11 he was going to deal with the surrounding area. But
12 he was very close and we were talking to each other,
13 so I am -- we just kind of -- we kind of both did it
14 together, all of it, it seemed like.

15 Q. Your answer sort of comports a lot with
16 what Vinje told me as well.

17 A. Uh-huh.

18 Q. What I would like to do is maybe go
19 through some questions with you about how you
20 approached command of this particular incident.

21 A. Okay.

22 Q. And I have never been a police officer,
23 and I have never been in charge of a complex
24 incident like this, so I may ask you questions that
25 might seem a little odd, but I am trying to figure

1 out your thought processes as you approached this
2 situation.

3 A. Okay.

4 Q. So first I need a little bit of background
5 explanation about what the hasty team is.

6 A. A team that would have to deal with
7 something immediate, if something was like
8 immediately they had to move to somebody being
9 injured or immediately going towards wherever the
10 problem was rather than more of the perimeter
11 positions that would be kind of surrounding the
12 house and getting observation of the house.

13 Q. So those perimeter positions are more of a
14 cover officer role?

15 A. They can be. They can also -- things can
16 transition very quickly, but in general, yes.

17 Q. Okay. So how do you pick -- let's just
18 talk about March 30th.

19 A. Okay.

20 Q. And let's not make it too general.

21 On March 30th, when you were thinking that
22 you needed to have a hasty team --

23 A. Uh-huh.

24 Q. -- how do you go about deciding who is
25 going to be on that team and what they are going to

1 do?

2 A. Whoever arrives there.

3 Q. So any officer can be on the hasty team?

4 A. Yes.

5 Q. I understand that on the date of this
6 incident, there were a number of members of the SWAT
7 team who just coincidentally showed up at the scene.

8 A. Yeah.

9 Q. Would you pick SWAT officers primarily to
10 be on your hasty team?

11 A. I would use them certainly if they were at
12 hand, but I wouldn't take somebody -- a SWAT officer
13 who was maybe in the back of the house and take the
14 time to bring them to the front because -- not until
15 it became a SWAT incident, which this never -- well,
16 it didn't turn into.

17 Q. A SWAT incident?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes.

21 Q. Sorry.

22 A. Yes. Sorry.

23 Q. What -- so in your experience both on the
24 SWAT team and as an incident commander, what factors
25 go into creating a SWAT response?

1 A. It has to do with the severity of the
2 crime.

3 Q. All right.

4 A. And the details at whole. A lot of what
5 our policy will say is armed barricaded subjects,
6 active shooters, high-risk search warrants, those
7 kind of things are what our SWAT team responds to.

8 Q. And that is in a policy dealing with the
9 deployment of the SWAT team?

10 A. Yes.

11 Q. All right. In this incident at the Devos
12 Street -- on Devos Street on March 30th --

13 A. Uh-huh.

14 Q. -- did you at any point in time think that
15 this was an incident that would call for the SWAT
16 deployment?

17 A. I briefly did towards the end of it, when
18 I -- I didn't have the whole picture of what was
19 going on. I briefly did, but up until that point,
20 no, or we would have deployed the team.

21 Q. At what point in this timeline -- I am
22 going to go through the timeline with you in a
23 minute, but at what point in the timeline did you
24 briefly consider deployment of the SWAT team?

25 A. When I believed that there was a shot

1 fired at us.

2 Q. When -- was that when Officer Stutesman
3 fired?

4 A. Yes.

5 Q. And you didn't know who had fired the
6 shot?

7 A. Correct.

8 Q. Okay. And if you had believed it was
9 Mr. Babb or the suspect in the house, would that
10 have triggered the SWAT deployment?

11 A. Yes.

12 Q. All right. So up to that point, what sort
13 of situation did you think you had?

14 A. Well, we were still trying to figure it
15 out. I wasn't quite sure. It changed dynamically
16 from the beginning until -- until the end a couple
17 different times.

18 Q. And let's go through that.

19 A. Okay.

20 Q. And I know that we are re-creating
21 something that happened two years ago.

22 A. Uh-huh.

23 Q. And you are free to use any of the
24 paperwork or documents to jog your memory, including
25 your report or anyone else's report.

1 When you first arrived at the Devos Street
2 address, were there other officers already present?

3 A. Yes.

4 Q. Do you recall who was present at that
5 time?

6 A. I don't remember exactly who, no.

7 Q. And prior to this call, were you familiar
8 with that Devos neighborhood?

9 A. I know of the neighborhood. I wasn't
10 familiar with the house or the layout of the area
11 around it.

12 Q. Okay. I have -- I am looking for some
13 pictures and some maps, so I apologize. I might
14 have to use stuff that is in your notebook real
15 quick. I think we were using Exhibit 16
16 consistently with the other officers' testimony, so
17 that might be fair to just use the same one with
18 you.

19 This is a Google Maps overview of the area
20 that officers were deployed to on March 30th.
21 Several officers have testified with this picture in
22 mind, and this picture was originally used with the
23 neighbor at 2244.

24 So does this look familiar to you, this
25 particular picture?

1 A. The overview. Not what is written on it.

2 Q. Oh, yes. Witnesses have written on it, so
3 don't -- just ignore that.

4 A. Okay.

5 Q. Just don't focus on the writing.

6 So where did you enter Devos Street?

7 A. Where did I --

8 Q. When you first arrived, what was your
9 approach?

10 A. I walked on foot from the south.

11 Q. And where did you park your vehicle, if
12 you recall?

13 A. Somewhere down here.

14 Q. Okay. Somewhere off --

15 A. Somewhere off the map, yes.

16 Q. Why did you park at the location you
17 chose?

18 A. I wanted to be out of sight and out of any
19 firing line from the involved residence.

20 Q. And did you think that you had an active
21 shooter in the vehicle when you first -- or in the
22 house when you first approached?

23 A. An active shooter, no.

24 Q. Now, I know that you have told me that you
25 believed that the person in the house had fired a

1 shot. Did you know where that shot had been fired
2 towards, where he had fired, if at all?

3 A. Dispatcher said out the window or
4 somewhere in the house is -- I think was similar to
5 what she said. Out the window or somewhere in the
6 house.

7 Q. Were you able to confirm that, in fact, a
8 shot had been fired that day?

9 A. Later in the investigation?

10 Q. Yes.

11 A. Yes.

12 Q. That day that shot had been fired?

13 A. Well, I don't know for sure. They found,
14 I believe, a bullet hole in the house.

15 Q. Was there any question as to the
16 truthfulness of the information about -- let me
17 strike that.

18 Did you ever confirm the accuracy of the
19 report that a shot had been fired that day?

20 A. I just saw it in police reports.

21 Q. That the shot had been fired that day?

22 A. That they had found a bullet hole, I
23 believe. I don't remember the specifics.

24 Q. Okay. The original information, as I
25 understand it, came from the therapist to dispatch

1 about the shot being fired. Is that correct?

2 A. I believe so.

3 Q. All right. Do you -- at any point in time
4 in this March 30th incident, did you ever speak to
5 the therapist yourself directly?

6 A. No.

7 Q. Did you ever try to make attempts to speak
8 to the therapist?

9 A. No. We did have her number.

10 Q. All right.

11 A. But I don't remember ever calling.

12 Q. Is there any reason why you did not call
13 her?

14 A. She was on the line with Mr. Babb at the
15 time for most of this incident.

16 Q. Were you able to -- was anyone on your --
17 were any of the responding officers able to call
18 Mr. Babb on the line in the house?

19 A. I believe Officer Grose attempted to and
20 may have gotten him on the line at least on one
21 occasion.

22 Q. Did you -- did you think -- did you ask
23 any officer maybe to go retrieve the therapist from
24 her office to bring her to the scene?

25 A. No.

1 Q. And is there some reason why not?

2 A. Well, that -- the incident was happening
3 pretty dynamic, pretty quick. I didn't think at
4 that point it was practical.

5 Q. And why not?

6 A. I didn't know where she was. She had been
7 on the line with Mr. Babb for -- she had been
8 speaking with Mr. Babb, and she thought it so --
9 such a dire situation that she needed to call the
10 police to help. I assumed that she had done
11 everything that she could to help him and was now
12 trying to go through another avenue to get the
13 situation resolved.

14 Q. Well, was this a welfare check response by
15 police?

16 A. It was a response to somebody who may have
17 shot out of the house.

18 Q. So it was a criminal investigation
19 response?

20 A. To start. That was part of it for sure.

21 Q. So was there anything -- any plan in your
22 mind to maybe arrest Mr. Babb for firing a round?

23 A. If we had determined that he was -- that
24 he had fired it outside of the house, that would
25 have eventually been our thought process, yes. I

1 don't know when or how that would have occurred.

2 Q. Okay. So I am going to go through with
3 you the best that we can together --

4 A. Okay.

5 Q. -- the timeline upon your response,
6 responding to the -- Mr. Babb's location.

7 You said you walked from the south north
8 on Devos Street. Is that correct?

9 A. Yes.

10 Q. And where did you walk to originally?

11 A. Right here.

12 Q. The driveway of 2244?

13 A. Yes.

14 Q. And I know the picture is a more recent
15 picture than March 30th. What could you -- where
16 did you go to on that particular property?

17 A. At the -- I guess it would be the
18 northeast corner of the structure.

19 Q. Could you see the Babb house from there?

20 A. The second story.

21 Q. Could you see -- you couldn't see the
22 front door at all?

23 A. No, not well enough to be able to contain
24 anything that was -- may or may not have happened at
25 that front door. I don't remember if I could see

1 the top, but certainly not enough to be able to --
2 to have a good observation of if anything came or
3 went from that door.

4 Q. When you arrived at the driveway of 2244,
5 were there other officers already present?

6 A. Yes.

7 Q. Who was present?

8 A. I don't remember. I think -- I couldn't
9 say for sure. I don't remember.

10 Q. Were there -- was Officer Kidd on the roof
11 of 2244 at that time?

12 A. No.

13 Q. Were there officers at the rear of the
14 Babb property? And I mean by rear, behind this
15 vacant space here on the map.

16 A. Uh-huh. I don't believe that --
17 Officer Clark was one of the officers that was back
18 here, and I don't believe he approached until he had
19 a second officer, which was Officer Warden, so there
20 was a -- a little bit amount of time before we had
21 any view or information of the back side or the west
22 side of the house.

23 Q. When you first arrived at 2244, do you
24 know where any of your officers were posted up?

25 A. We had a couple officers here, and Barnes

1 and Farley were trying to -- were out to the north.

2 Q. And you said you had a couple of officers,
3 and you pointed to 2244 driveway. Do you remember
4 who those officers were?

5 A. I don't.

6 Q. And the BearCat was not yet located there.
7 Is that correct?

8 A. No.

9 Q. And I understand that you may have called
10 Lieutenant Klinko to get permission to get the
11 BearCat. Is that correct?

12 A. No. Just to make the notification.

13 Q. All right. And then at some point Officer
14 Pieske arrived with the BearCat. Is that correct?

15 A. Correct.

16 Q. How long had you been at the 2244 location
17 when the BearCat arrived?

18 A. I don't recall. I guess that would be on
19 dispatch records again.

20 Q. And I am just trying to get a ballpark
21 from you what you recall.

22 A. Sure. I don't remember.

23 Q. All right.

24 How long -- so you knew there were other
25 officers at the location when you first arrived. Is

1 that fair?

2 A. Absolutely. Yes.

3 Q. Okay. Why did you not go up to the Babb
4 house?

5 A. Because we had information that he had
6 shot out of the house, and we would never walk --
7 just walk up to a house where somebody had possibly
8 fired out of a window for fear of our safety.

9 Q. So let's stop right there for a second.

10 A. Okay.

11 Q. To the best of your ability -- and I
12 understand that this is just -- we are talking two
13 years later.

14 A. Sure.

15 Q. To the best of your ability, at that point
16 in time upon your arrival at the 2244 residence,
17 what was your plan to figure out what was going on?
18 What were you going to do?

19 A. We were going to try to get into contact
20 with Mr. Babb or have his therapist ask him to come
21 out unarmed so that we could talk to him and figure
22 out what was going on.

23 My other -- the other plan was we needed
24 better eyes on the house, be able to see the house
25 from every point of view that we could in the safest

1 manner that I could make that for everybody
2 involved.

3 Q. Okay. How were you going to contact the
4 therapist? I am just talking -- we are right --

5 A. I did it through dispatch.

6 Q. Okay. What did you say to dispatch?

7 A. I said ask -- I don't know what my exact
8 words were.

9 Q. Okay.

10 A. But I said something to the effect of can
11 you ask the therapist to have Mr. Babb come out of
12 the house unarmed.

13 Q. And did that happen as far as you know?

14 A. No.

15 Q. You don't know whether -- do you know
16 whether dispatch asked the therapist to speak to
17 Mr. Babb?

18 A. No.

19 Q. Did you follow up to find out if the
20 therapist had, in fact, spoken with Mr. Babb?

21 A. I asked a second time, yes.

22 Q. Did you get any response from dispatch?

23 A. I don't believe so.

24 Q. You said that you had the therapist's
25 phone number?

1 A. Yes.

2 Q. And was -- and I know you have answered
3 this already, but let me -- let me try down another
4 line to see if we can jog your memory.

5 Do you know whether you or any other
6 officer called the therapist when you got no
7 response back from dispatch?

8 A. I did not.

9 Q. Do you know if any other officer tried to
10 contact the therapist?

11 A. I don't know.

12 Q. Did you think -- did you ask -- strike
13 that.

14 Do you know whether the therapist tried to
15 call any officer at the scene at that time?

16 A. I don't believe so.

17 Q. Okay. Now, I have spoken -- we have
18 spoken to several neighbors, and we have got a few
19 more to go through. I understand that there were
20 officers clearing or advising the neighborhood to
21 stay inside or -- I don't remember what the term is,
22 but stay in their house.

23 A. Uh-huh.

24 Q. Was that something that you directed
25 officers to do?

1 A. No.

2 Q. Who did that?

3 A. Which officers did that?

4 Q. Yes.

5 A. I think -- I believe it was Barnes and
6 Farley, because they were trying to find a place
7 where they could see from this northeast area. And
8 I think, during the process of doing that, they were
9 letting people know that they were either in their
10 backyard or if they could walk through their house.
11 So they had notified a couple people, but we weren't
12 specifically doing any citizen notifications at that
13 moment. We were still very early on in the incident
14 and trying to figure out exactly what we had.

15 Q. So you knew that you had the potential for
16 a person who had fired a round possibly outside
17 through -- outside into the community?

18 A. Possibly.

19 Q. Possibly. There are neighbors who say
20 that a plainclothes police officer came to their
21 door and told them to shelter inside.

22 A. Uh-huh.

23 Q. Do you know who that person might be, if
24 in fact there was a plainclothes policeman that day?

25 A. I don't know.

1 Q. And Sergeant, since you were the incident
2 commander, at least until Sergeant Vinje arrives,
3 did you order or ask any officer to go notify
4 neighbors to shelter inside?

5 A. I don't believe so.

6 Q. Okay. Sitting here today, and now you
7 have the benefit of all this hindsight and all this
8 review and all this evaluation, do you know who
9 might have been the officers who were notifying
10 particularly the neighbors here?

11 A. I have -- I have no idea.

12 Q. Okay. Prior to -- so we are still in the
13 driveway. That is where we are timeline in this.
14 Do you recall at any time from that point forward
15 you spoke -- you personally spoke to any neighbors
16 about Mr. Babb or the situation?

17 A. You know, I vaguely remember somebody
18 poking out here and yelling out to get back in the
19 house, but I didn't have a conversation with any of
20 the surrounding neighbors, I don't believe, no.

21 Q. So you pointed to the house which is to
22 the immediate north of 2244. Is that correct?

23 A. Yes.

24 Q. And did you speak to any resident of 2244?

25 A. I don't remember.

1 Q. They remember speaking to somebody. Did
2 you see any officers speak to the residents of 2244?

3 A. I never saw anybody, but there was, by the
4 end, four or five of us in and around here, and
5 Officer Kidd had made his way to the roof, so any
6 one of those officers could have. I don't -- I
7 don't remember doing it specifically.

8 Q. Okay. And that -- all you can do is tell
9 me what you remember.

10 A. True.

11 Q. Were there any -- did you assign an
12 officer to get on the rooftop of any other house
13 besides 2244?

14 A. No. And, in fact, I told Officer Kidd to
15 see if he could also get a better view of the front
16 part of the residence.

17 Q. From the top of 2244?

18 A. I didn't tell him to go there, but that is
19 where he chose.

20 Q. Okay. All right. Other neighbors, a
21 couple of them, remember seeing officers on two
22 rooftops.

23 A. Okay. By the end, there was an officer
24 with a ladder on this -- on the house directly to
25 the north. Maybe that is what they saw, but I don't

1 think he had ever made it to the top where he could
2 crest the view of the house.

3 Q. Okay. Do you remember which -- who that
4 was?

5 A. Farley.

6 Q. Farley?

7 A. I believe so.

8 Q. Now, Kidd told us that he had some
9 communication with Farley about maybe getting
10 another angle on the front of the house. Do you
11 remember --

12 A. Correct.

13 Q. -- any of those conversations?

14 A. Yes.

15 Q. Can you tell me what you recall of those
16 conversations?

17 A. I believe it was over the radio, and Joe
18 asked him if he could get a better view of the front
19 from anywhere. We -- this is a -- you know,
20 obviously, a residential area, and typically we
21 don't direct people to exact locations. We just
22 tell them, "Can you see the front side of the house?
23 Get to a place where you can see the front side of
24 the house," and officers will work from there.

25 Q. So as a layperson, it occurs to me that it

1 would be a good idea to know where all your officers
2 are physically located --

3 A. Absolutely.

4 Q. -- if you ever got a potential shooting.

5 A. 100 percent. In fact, I asked for that
6 several times, but when you are dealing with a
7 dynamic situation and about probably by the ten --
8 end of it, eight to ten officers, it is really hard,
9 especially when people are moving. You have a
10 general idea of where they are. And what I had
11 tried to do is keep a notebook with me and try to
12 figure out where stuff was.

13 Q. Okay.

14 A. But it is real -- in fact, on the radio, I
15 asked several times for people to give me their
16 exact locations, but that changes.

17 So again, really we have in these dynamic
18 situations that are happening very quickly, we do
19 the best that we can to know where they are at, but
20 we don't always know absolutely for sure where they
21 are.

22 Q. So when you say you had a notebook and you
23 were trying to keep track of everybody, were you
24 tracking them by their call sign or by their name?

25 A. I don't remember.

1 Q. Okay. Did you have a -- did you do a
2 rough handwritten map of the location?

3 A. No.

4 Q. Did you pull up a map like this one or
5 another one of the neighborhood?

6 A. No. I was standing at the back of a car
7 so --

8 Q. Okay. On the onboard computers in your
9 various patrol vehicles, can you pull up a map --

10 A. Uh-huh.

11 Q. -- of an area? Yes?

12 A. Yes.

13 Q. Did you ask anyone to do that for you?

14 A. We did not have the resources for that and
15 we could see where we were at.

16 Q. And that is fair. Thank you.

17 What I am trying to figure out is if you
18 have got at least one officer on a roof at some
19 point, another one maybe going on a second roof, you
20 have got two officers back here, and you think you
21 have an active -- you may have an active shooter in
22 here, do you want to avoid crossfire situations? So
23 you don't want these guys back here shooting if you
24 have got officers in front, do you?

25 A. Well, unfortunately, that is kind of the

1 nature of our business.

2 Q. And so tell me how you try to protect
3 against that happening, an officer getting
4 accidentally shot by friendly fire?

5 A. By knowing where they are at.

6 Q. Okay.

7 A. And officers putting themselves in places
8 behind cover.

9 Q. Okay.

10 A. And this position on this rooftop didn't
11 happen for a while.

12 Q. I get that. I am moving that way, but I
13 am of kind of asking some background, because you
14 are my -- you are my incident commander sitting
15 here --

16 A. Okay.

17 Q. -- answering your thought processes about
18 the incident. And I do appreciate it.

19 So were you able to -- it sounds like it
20 was very difficult for you to kind of know where
21 your officers were during this situation.

22 A. I had a general idea of where they were.

23 Q. So --

24 A. I was also standing in the front, so there
25 were some people that I could see.

1 Q. Well, and Officer Kidd did say that at
2 points in time he was actually talking to you
3 directly from his location.

4 A. Correct.

5 Q. Now -- but the officers down here, Barnes
6 and Farley, at least where they initially were
7 posted up, could they talk to you directly?

8 A. Occasionally they were back here, so I
9 could, yes.

10 Q. So they would move from this northernmost
11 post here down to the --

12 A. They were trying to get a better spot up
13 front, so they were around here.

14 Q. All right. At what point in this
15 situation did Farley move over here to the -- I wish
16 I knew the address of this; I am sorry -- but the
17 house north of 2244?

18 A. I don't recall.

19 Q. What about Barnes?

20 A. Probably the same time, but I don't know.
21 Again, they had mentioned it on the radio. I am
22 sure that is time stamped. I don't know what that
23 time was.

24 Q. And some of this becomes a little bit
25 important to me because Officer Barnes said that she

1 really never left this position throughout most of
2 the time period.

3 A. Uh-huh.

4 Q. Do you recall her moving up to this
5 northern tax lot over --

6 A. They were together. Officer Barnes and
7 Officer Farley, they said that they were together.
8 I assumed that they moved together. If they didn't,
9 that is -- we typically work in two-person teams.

10 Q. Uh-huh.

11 A. And we bound and overwatch, which
12 essentially means that one officer will go ahead of
13 us, and the other one will kind of watch from
14 behind. So if Farley tells me he is going here, I
15 assume that she is with him. That doesn't
16 necessarily mean she is right next to him. She
17 knows where he is at.

18 Q. Okay. So when Farley -- I think you have
19 told me that at one point Farley was trying to get
20 on the rooftop of that house north of 2244. Do you
21 remember seeing him put the ladder there and make --

22 A. No.

23 Q. Okay. How do you know that he was -- had
24 a ladder there?

25 A. I remember seeing a ladder there, and I

1 knew that is where he was going to be.

2 Q. Okay. With respect to Warden and Clark --

3 A. Uh-huh.

4 Q. -- on the -- is that the east side of
5 this?

6 A. Yes.

7 Q. East side. Could you see where they were
8 located from your position at 2244?

9 A. No.

10 Q. And the information that they are relaying
11 to you on the radio, where did you understand them
12 to be?

13 A. Somewhere along what would be the west
14 side of the house -- somewhere not along the west
15 side, but with a view of the west side of the house.

16 Q. Do you know which lot they were in?

17 A. I don't.

18 Q. Do you believe that they were together?

19 A. I don't know.

20 Q. Okay. All right. So do you know where
21 the notes are that you kept trying to locate, keep
22 track of your officers?

23 A. I don't know.

24 Q. Would you have given that to any
25 investigator?

1 A. I don't believe so.

2 Q. All right. When I -- I have sued a few
3 SWAT officers in my career, and typically the SWAT
4 team has the benefit -- a little bit advance notice
5 and a little bit of advanced planning. Is that
6 typical with your SWAT team?

7 A. It is probably a 50/50 split.

8 Q. Okay. That is fair.

9 In those instances where you have time to
10 do a plan, do you have a map and then you do
11 different -- where you want officers to go?

12 A. Yes.

13 Q. Did you have time to do anything like this
14 at the Babb house?

15 A. Not -- nothing any more than scratched
16 notes on a scratch piece of paper, my notebook.

17 Q. Now, at some point Officer -- or
18 Sergeant Vinje arrived, and I think you have already
19 told me that you divided duties up at that point.

20 A. Correct.

21 Q. And I think you told me -- and he said
22 something like this as well, that his -- he believed
23 his assignment were to take care of these perimeter
24 officers on the perimeter of the house. Is that
25 fair?

1 A. Yes.

2 Q. What did you expect him to be doing when
3 he is taking care of the perimeter? And I don't
4 mean like you are in charge -- just in your mind, as
5 you are thinking through the dynamics of the
6 situation, what did you believe Sergeant Vinje was
7 taking care of?

8 A. Dealing with the officers that were
9 getting into place. The problem was we didn't have
10 very many.

11 Q. Very many what?

12 A. Officers.

13 Q. Could you have brought more in if you
14 needed them?

15 A. No.

16 Q. Oh, okay. You were maxed out?

17 A. At that point, everybody that could go was
18 going.

19 Q. Okay. So there were, what, eight or nine
20 officers there at the maximum capacity when --

21 A. Somewhere around there.

22 Q. Okay. And did -- did each of those
23 officers check in with you upon their arrival at the
24 scene?

25 A. They just checked out with dispatch.

1 Q. So the only way you knew who was
2 responding and roughly where they were going is what
3 was being told to you on the dispatch?

4 A. Yes.

5 Q. Okay.

6 A. Other than the people in the front that I
7 could see.

8 Q. Okay. So let's -- let's move forward.
9 And again, if you need to look at your report, that
10 is very fine with me.

11 So from the driveway at 2244, we were --
12 where you originally posted up, tell me the next few
13 things that happened in the order that you remember
14 them happening.

15 A. From what point?

16 Q. When you are standing here in the driveway
17 at 2244, when you first get there. So what is the
18 next thing that you remember happening?

19 A. Well, I talked to the officers, and I
20 believe I wanted to make sure that we had less
21 lethal options with us, like a 40-millimeter, and
22 officers trying their best to keep an eye on it to
23 see if anybody was going to leave the residence or
24 if there were any shots out of the residence. So I
25 was trying to coordinate with the people that were

1 there on scene for that.

2 And then I was, again, continuing to try
3 to figure out where exactly people were so I had a
4 better understanding of who was where. Not
5 necessarily for a crossfire issue. That is kind of
6 lower on our threat assessment. More we wanted eyes
7 on every side of this -- of the involved residence
8 so we could see if something -- if there was a shot
9 out of a window, if there was damage to the house,
10 to make sure nobody got out of the house, or if they
11 did, we were able to intercept them.

12 Q. So was this -- I want to ask my questions
13 in order, but I feel like I want to skip ahead a
14 little bit here.

15 When you -- you advised me earlier that
16 you thought that this was as likely to be a criminal
17 investigation -- that is a shot fired out -- as well
18 as a welfare check. Was there any point in time
19 when you determined that you were going to leave the
20 scene?

21 A. We were going to -- that was certainly an
22 option at one point.

23 Q. What was going on at the point where you
24 were talking about leaving the scene?

25 A. We had gotten the roommate out, so the

1 concern of anybody else being in the house was
2 mostly gone. And we were talking to him. He didn't
3 believe that there was anybody else in the house, so
4 at that point, when Mr. Babb is in the house by
5 himself, we needed just to make sure that a shot
6 hadn't been fired out.

7 So I had spoken to Lieutenant Klinko, and
8 we both concurred that leaving was going to be an
9 option very soon after we could get direct eyes on
10 each side to make sure that we didn't see a window
11 with a bullet hole in it, and then we were going to
12 pull back from the situation.

13 Q. So that house has two floors. Correct?

14 A. Correct.

15 Q. So you had windows on the top floor?

16 A. Yes.

17 Q. Front and back?

18 A. Yes.

19 Q. And you had windows on the bottom floor,
20 front and back?

21 A. Yes.

22 Q. Who was checking the back to see if the
23 windows had been broken out?

24 A. We -- I didn't ask for that yet but --

25 Q. Okay.

1 A. -- I assume if they had told -- if they
2 had seen it, my assumption would be that they would
3 probably tell me. I don't know if they were looking
4 specifically for that. But as I was about to give
5 that command, to start asking people if they see any
6 holes in any of the windows, Mr. Babb came out.

7 Q. Okay. When did -- so at some point the
8 BearCat did arrive. Did that change what you were
9 doing at the scene?

10 A. It gave us a platform where we could move
11 a little closer to see the front door.

12 Q. Okay. Between the time you arrive and the
13 time the BearCat arrives, could you hear Mr. Babb
14 yelling or saying anything?

15 A. I don't remember if it was before --
16 certainly during this incident we heard lots of
17 yelling.

18 Q. Sure.

19 A. I don't remember if he was yelling before
20 we had gotten the BearCat there.

21 Q. And how did you know there was a roommate
22 in the house?

23 A. Well, we were told -- I think it was the
24 therapist that maybe told dispatch. Also, there was
25 two trucks in the driveway. We were able to

1 determine from the license plate that Mr. Babb's
2 truck was in front, and there was a -- Antonini, I
3 believe is his last name, his truck was behind him.
4 So I am -- we thought maybe that there was somebody
5 else in the house.

6 Q. And how did you get Mr. Antonini to come
7 out of the house?

8 A. We were hailing with the BearCat.

9 Q. So the hailing from the BearCat came after
10 the BearCat was moved up the driveway at 2244?

11 A. Yes.

12 Q. Okay. Was the BearCat staged down here on
13 Devos Street at all for a period of time?

14 A. Momentarily.

15 Q. Okay. There is one witness who saw what
16 she called a van. Was there ever a command vehicle
17 or a van located on the street?

18 A. Eventually.

19 Q. After the shot's fired?

20 A. Much after.

21 Q. Okay. Now, can you explain to me why you
22 asked for the BearCat to be deployed to this scene?

23 A. Because we knew that somebody could
24 possibly be shooting out of a house. The first
25 officers on scene had said that it was a panhandle

1 lot and very difficult to get eyes on the front
2 door, which is the common ingress and egress point
3 for somebody where we really want to get eyes on.
4 So I felt like we needed to get a piece of armor,
5 also with an elevated platform that we could
6 position somewhere to be able to keep eyes on that
7 front door and to use it as a PA if we needed to.

8 Q. Okay. And you had Officer Pieske drive
9 the BearCat to the location?

10 A. He just happened to be on duty, and I
11 don't remember if he was asked or volunteered, but
12 he is the one that went. I didn't specifically ask
13 for anybody.

14 Q. Okay. So I want to ask you about where
15 that BearCat eventually parked --

16 A. Okay.

17 Q. -- in the driveway. And there may be some
18 pictures, what, about Exhibit 38 through 40,
19 something like that. There are some pictures that
20 are longer. There you go. And I didn't number
21 mine, but let me see which ones would be best.

22 Take a look at Exhibit 37, and this is an
23 exhibit I used with Officer Pieske. The writing on
24 here is his.

25 A. Okay.

1 Q. And I am trying to locate the best
2 recollection that officers have of where that
3 BearCat was situated when you started hailing the
4 house.

5 A. Well, we were -- we were kind of angled
6 towards the front door. I believe we were behind a
7 drift boat in the RV parking of the house directly
8 to the south.

9 Q. Okay. At some point were you inside the
10 BearCat?

11 A. Kind of. If the back -- the back has two
12 doors that open, and it is kind of a big opening, so
13 if I needed to talk to somebody that was inside, I
14 would kind of step into it. Mr. Antonini and -- at
15 some point ended up in the back of the BearCat. I
16 remember talking to him. So kind of back and forth.

17 Q. Now, I -- I think I have enough of a
18 description from Officer Pieske about the vehicles
19 that were between he and the house --

20 A. Uh-huh.

21 Q. -- and the fence and all of that. Was
22 there some decision to have Officer Stutesman stand
23 in the turret?

24 A. Yes.

25 Q. Who made that decision?

1 A. I did.

2 Q. And why did you choose Officer Stutesman?

3 A. He -- initially, I believe I was going to
4 put Officer Kidd in there, but he didn't have his
5 long rifle, so I put Officer Stutesman up there, who
6 did.

7 Q. And Officer Kidd told me at some point he
8 did ask for a rifle.

9 A. Yes.

10 Q. And that you handed him one.

11 A. Yes.

12 Q. Do you remember that happening?

13 A. Yes, I did.

14 Q. Okay. When Officer Kidd was on the
15 rooftop of 2244, did you ask him what he could see,
16 what his vantage point was?

17 A. I believe I did.

18 Q. Can you remember what he told you?

19 A. I don't.

20 Q. Do you remember if he could see the front
21 door?

22 A. Can I look at the radio traffic?

23 Q. Yes.

24 A. I don't remember if --

25 Q. Yes.

1 A. Because I believe he told me something. I
2 don't remember what it was.

3 There is not a comment in here, I don't
4 believe. I believe he could see a portion of the
5 door. I don't remember which portion that was
6 exactly.

7 Q. Okay. So -- I am sorry.

8 A. That is okay.

9 Q. I don't mean to get in your way here.

10 So Exhibit 40, these -- in fairness, we
11 did a shooting reconstruction, and we used the dash
12 cam video from the BearCat and we did a 3D rendering
13 with a particular topography machine. And then the
14 neighbors north of 2244 were videotaping and
15 photographing you guys while you were there. So we
16 put all of those things together to do our best
17 estimate of the location of the BearCat.

18 So if you could take a look at these
19 pictures, and these again are from the camera in the
20 BearCat, which is slightly elevated and to the right
21 of the driver's seat. Do you remember that?

22 A. Where our camera is on --

23 Q. In the BearCat, yes.

24 A. The ICV?

25 Q. Yes.

1 A. Yeah. It is in the windshield inside.

2 Q. Let's make sure we are talking about the
3 same thing so -- I never assume anything.

4 Take a look at 41. There is a picture of
5 the BearCat, and we have drawn a line to the camera.
6 Is that fair about where the camera is located?

7 A. Where the dash cam is?

8 Q. Yeah.

9 A. That is the picture of the BearCat, so
10 yeah, that is fair.

11 Q. Is there a different camera or that's the
12 only one in the BearCat?

13 A. That is the only one that was on the
14 BearCat.

15 Q. Okay. So if you can look at this angle,
16 and this is, again, a screenshot we have captured
17 from the video of the BearCat. Does this look like
18 the angle that the BearCat was pointed at the time
19 of the shooting?

20 A. I don't know.

21 Q. Well, let's back up a second.

22 So the BearCat gets into the driveway.

23 A. Of next door.

24 Q. Of 2244.

25 A. Okay.

1 Q. And there were vehicles that were in the
2 driveway leading up to the Babb house. Is that
3 correct?

4 A. Correct.

5 Q. And did you move the BearCat at any time
6 once it was in the driveway other than the advance
7 on the house at the end?

8 A. I don't remember. I know that it was --
9 we had pulled it in to face -- because the house is
10 kind of canted.

11 Q. Uh-huh.

12 A. And we were trying to position the BearCat
13 in such a way that the person in the -- that was out
14 of the hatch could see the front door, so I don't
15 remember if there was any jockeying around with
16 that. I don't -- I don't recall. I was standing
17 behind it. They may have made minor adjustments. I
18 just don't know.

19 Q. Okay. If you look in the picture there
20 from the BearCat, there is not only the two
21 vehicles, but there are these posts in the ground.
22 Was there some discussion about how the BearCat was
23 going to get up to the house if you had to get up to
24 the house?

25 A. No.

1 Q. All right. And I have heard testimony
2 that Mr. Babb actually came out the door twice that
3 officers saw. Do you remember any of that?

4 A. I remember them saying the door is open
5 and he was yelling out. I don't know whether -- I
6 was standing behind. I couldn't see anything that
7 was happening, so I don't know if he came out of the
8 house, went back in. I know that he was yelling and
9 the door opened I think it was a couple times at
10 some point during this.

11 Q. Okay. Did Officer Kidd say anything to
12 you after the first time Mr. Babb came to the door
13 about what he saw or what was going on?

14 A. I think so, because I saw a dispatch
15 comment in here about it.

16 Q. Okay.

17 A. At 5:43 he said that the subject is at the
18 door.

19 Q. Now, that was on the radio. Correct?

20 A. Yeah. I don't know what his exact
21 verbiage was. Typically they summarize what they
22 say.

23 Q. Did Officer Kidd turn around and yell down
24 at you that the subject was at the door or what he
25 was doing, what he was wearing, anything like that?

1 A. I don't remember. We were in some
2 conversations occasionally. I don't remember
3 exactly what that -- those conversations entailed.
4 And if it was on the air, I was listening to it, and
5 I was catching as much as I could.

6 Q. Do you remember the essence of information
7 you were getting from Officer Kidd even if you don't
8 remember the exact language?

9 A. I don't know. I don't remember.

10 Q. Okay. Now, when Officer -- when Mr. Babb
11 came to the door the first time -- and I have heard
12 from a number of witnesses that he came at least
13 twice that your officers saw. The first time
14 Mr. Babb came to the door, did anyone else tell you
15 they saw him besides Officer Kidd?

16 A. I don't remember.

17 Q. In relationship to the first appearance --
18 you just told me Officer Kidd radioed 5:43 Mr. Babb
19 was at the door. Had Mr. Antonini already left the
20 house at that point?

21 A. No.

22 Q. And how long after that -- and I know
23 there is some dispatch notations on that. How long
24 after that did Mr. Antonini leave the house?

25 A. According to dispatch, nine seconds.

1 Q. Nine seconds after Kidd saw Mr. Babb at
2 the door?

3 A. Uh-huh.

4 Q. And did you watch Mr. Antonini come down
5 from the house?

6 A. No. I could just hear the officers giving
7 him commands.

8 Q. Who was telling you that Antonini was -- I
9 know they didn't know his name, but who was telling
10 you that someone was coming out of the house?

11 A. All of the officers that were around. I
12 think Vinje was on one side. DeWitt was on another
13 side. When we are back there, everybody is just
14 kind of talking, like "We have one person coming out
15 of the house." I don't remember what the exact
16 verbiage was, but it's something similar to that.
17 Pretty normal. So I knew that there was somebody
18 coming out.

19 Q. So I know Officer Kidd noted when
20 Mr. Antonini left the house. How did Vinje and
21 DeWitt learn that someone was coming out of the
22 house?

23 MR. SCHMIDT: Objection. Calls for
24 speculation.

25 BY MS. BURROWS:

1 Q. You just told me that Vinje and DeWitt
2 were talking about someone coming out of the house.
3 Do you know how they learned that information?

4 A. I don't.

5 Q. Could you see Mr. Antonini as he is coming
6 down the driveway?

7 A. I don't remember if I peeked my head out.
8 I don't believe so.

9 Q. When was the -- where were you when you
10 first saw Mr. Antonini?

11 A. I don't recall.

12 Q. Did you interview Mr. Antonini once he got
13 down behind the BearCat?

14 A. When he was inside of it, yeah.

15 Q. Why did you put him inside the BearCat?

16 A. Because I was worried for his safety.

17 Q. And tell me that conversation you had with
18 Mr. Antonini. What did he tell you?

19 A. We asked him if there was anybody else in
20 the house. We asked him what he saw as he was
21 coming out. And that was kind of the -- asked him
22 if he had heard a shot while he was in there. When
23 he had got home. Just trying to get some more
24 information about what was going on that afternoon.

25 Q. When did Mr. Antonini get home that day?

1 Do you recall?

2 A. I think it is in my report, I believe, or
3 in my statement.

4 Q. Tell me where you are reading from when
5 you get there.

6 A. Okay. He said he had arrived home about
7 four, and that is on page 3 of 4.

8 Q. And you are reading from where, please?

9 A. One, two, three -- the fourth paragraph
10 down, second line.

11 Q. Okay. And he also told you he had not
12 heard a gunshot?

13 A. Correct.

14 Q. And he had gotten home about 4 p.m.?

15 A. Correct.

16 Q. And the original call that came in from
17 the therapist was about five o'clock or so?

18 A. Yes.

19 Q. Okay. What other -- what other things did
20 you and Mr. Antonini speak about?

21 A. He told me that he was going towards the
22 gun safe when he left, when Mr. Antonini came out
23 towards the front door.

24 Q. Mr. Babb was going to the safe?

25 A. Correct. And that he acts crazy when he

1 is not on his medication.

2 Q. Mr. Babb is crazy?

3 A. Mr. Babb.

4 And that he had severe PTSD to -- and had
5 a bunch of firearms.

6 Q. Okay. Did you ask Mr. Antonini whether he
7 was in fear for his own safety?

8 A. No, not right then. We had a different
9 conversation a few moments later.

10 Q. Okay. Did Mr. Antonini appear that he was
11 afraid?

12 A. He was -- the way he was describing
13 Mr. Babb's actions, he was very concerned.

14 Q. Okay. Did Mr. Antonini tell you -- so
15 strike that. Let me back up a few steps.

16 Mr. Antonini gets home at four o'clock.
17 This is about 5:43 or so when you are having this
18 conversation with Mr. Antonini. Did Mr. Antonini
19 tell you what had gone on between four o'clock and
20 the time that he came out of the house?

21 A. I believe he said he went to -- he was
22 sleeping.

23 Q. He was sleeping.

24 A. Yeah.

25 Q. Did he tell you when he became aware that

1 police were outside yelling at the house?

2 A. When the BearCat started hailing.

3 Q. Can you look at dispatch and tell me if
4 there is any indication about when that was, when
5 y'all started hailing the house?

6 A. I believe it is at 5:37.

7 Q. And did you hail -- and I don't mean
8 constantly but continuously from three -- from 5:37
9 until 5:44, when Mr. Antonini came out?

10 A. Not continuously, no.

11 Q. How many times do you suppose you hailed
12 the house during that ten-minute period?

13 A. I don't know.

14 Q. And who was doing the hailing?

15 A. Officer Grose.

16 Q. And do you remember the things that
17 Officer Grose was saying?

18 A. I believe for anybody inside the house to
19 come out with their hands empty to the police and
20 that we were the Eugene Police Department.

21 Q. Okay. Do you know whether -- you said
22 earlier, I think, that Officer Grose also called in
23 to Mr. Babb's house?

24 A. (Nods head.)

25 Q. Yes?

1 A. Yes.

2 Q. Was that before or after this ten minutes
3 or so of hailing?

4 A. I don't remember.

5 Q. And Officer Grose is -- I don't know if I
6 will use the right word here, but please correct
7 me -- a hostage negotiator or is trained in
8 negotiation tactics?

9 A. He is a negotiator, yes.

10 Q. Have you been on scenes with Officer Grose
11 prior where he has negotiated with suspects?

12 A. I have.

13 Q. And how would you say Mr. -- Officer
14 Grose's ability as a negotiator is?

15 A. He is very capable.

16 Q. Okay. And has he been successful in
17 talking suspects into surrendering or coming safely
18 out?

19 A. I don't know what his success rate is.

20 Q. Well, what have you seen?

21 A. I don't remember exactly. I couldn't say.
22 He has dealt with people, and it has been effective.
23 I don't know how many times that has been. I don't
24 really document that so -- but I have seen him talk
25 to many people, and he seems to be able to gain a

1 rapport.

2 Q. Okay. In this particular instance, you
3 knew that Mr. Babb was in -- a wounded veteran. He
4 had PTSD. Did you know that he had any neurologic
5 or brain injuries?

6 A. No.

7 Q. Okay. Have you been trained in how to
8 approach wounded veterans who may have either
9 psychological or physical injuries?

10 A. Some. We have CIT training that is put on
11 through the department.

12 Q. What does CIT stand for, if you know?

13 A. Critical incident training --

14 Q. Okay.

15 A. -- I believe. It has to do with speaking
16 to folks that are both mentally ill and have had
17 some sort of trauma in their lives, including
18 veterans.

19 Q. Okay. And of the CIT training, how often
20 is that offered?

21 A. We had a 40-hour class.

22 Q. A 40-hour class?

23 A. Yeah. And then we talk about it pretty
24 regularly in in-service, whether that is with
25 command staff talking to us about it -- I have also

1 had the luxury of being involved in the SWAT team
2 and have gone to team commander schools where we
3 talk about this sort of thing very regularly.

4 Q. Okay. So you would say that you have a
5 fairly deep knowledge of how to deal with mentally
6 or physically impaired suspects?

7 A. I don't know that anybody has a fairly
8 deep knowledge. I have a very basic understanding
9 of how to try to deal with it in a police setting.

10 Q. Can you explain to me how you have been
11 trained to deal with -- and let's focus on a
12 veteran, because that is what we have here --

13 A. Sure.

14 Q. -- who may or may not be suffering from
15 PTSD. And tell me, do you understand what PTSD is?

16 A. Yes.

17 Q. Could you explain to me what you -- your
18 understanding of PTSD is?

19 A. Trauma suffered from a very traumatic
20 incident or a series of incidents that have occurred
21 in somebody's life. Specifically for a veteran,
22 maybe having been involved overseas in some sort of
23 warfare, some sort of seeing things that a layperson
24 wouldn't normally see in a war-type setting.

25 Q. And is it your understanding that these

1 experiences can psychologically traumatize someone?

2 A. Absolutely.

3 Q. And what is your understanding of what
4 happens with a person suffering from PTSD? What
5 symptomatology, what experiences are they going
6 through?

7 A. I guess I don't understand your question.

8 Q. Well, do you understand that they may
9 suffer from flashbacks?

10 A. Yes.

11 Q. Are there any other experiences that you
12 understand a victim of PTSD would be suffering from?

13 A. Voices in somebody's head, panic.

14 Q. Okay.

15 A. Those are the two that come to the top of
16 my head.

17 Q. In your CIT training or any other training
18 you have received, have you -- have you given
19 training or been given training or education on the
20 combat experiences that veterans may have
21 experienced that could be triggered by a police
22 presence?

23 A. Yes.

24 Q. Okay. Can you explain to me what sorts of
25 training and education you have received?

1 A. Just that in -- as a veteran, certain
2 military kind of things could trigger a violent
3 response.

4 Q. And by violent, what do you mean?

5 A. A shooting encounter.

6 Q. Okay. So let's go into that just a tad
7 bit deeper for me, if you don't mind.

8 A. Sure.

9 Q. Have you been trained that a veteran -- a
10 combat veteran who may come across a police officer
11 or SWAT team in an aggressive fashion, that SWAT
12 teams do do, that they may have a flashback or
13 believe that they are back in combat?

14 A. Sure.

15 Q. Okay.

16 A. But we also have to weigh that against the
17 safety of the community.

18 Q. I am not asking -- I am not making a
19 judgment. I am just asking what your training is.

20 A. Sure. But the training also has to deal
21 with -- we also have a duty to do our particular
22 job, which is, say, to protect the community at
23 large as well as the people that are involved, so it
24 could be a measured response depending on what we
25 are dealing with.

1 So just because somebody may be in that
2 sort of crisis, we also have to balance that with
3 the protection of the community around, so those are
4 the things that we are thinking about. So we are
5 taking those into account, but also our job as
6 police officer is to keep other people in the
7 neighborhood safe.

8 Q. And I get that.

9 A. Okay.

10 Q. I personally appreciate that that is what
11 you do.

12 A. Sure.

13 Q. So in this situation --

14 A. Uh-huh.

15 Q. -- you have a combat veteran who one
16 witness is telling you -- the roommate is telling
17 you that he is having some kind of an emotional
18 response to whatever situation he is finding himself
19 in at that moment. Have you been trained on how to
20 diffuse that heightened state of reaction in
21 veterans?

22 A. I have been given a number -- several
23 different ways to deal with it, correct.

24 Q. Can you explain to me how you have been
25 trained to --

1 A. There are lots of different ways. You can
2 sometimes -- sometimes getting them to talk to a
3 veteran. Sometimes seeing -- I mean, it could be
4 varied. Everybody has a different reaction.

5 Q. Sure.

6 A. It could be completely retreating. It
7 could be not. It could be showing like, hey, we are
8 here. We are here to help. So it kind of depends
9 on each situation, and we are trying to, again,
10 balance the community safety with the safety of the
11 people involved and the safety of the officers
12 there. So we have about a hundred tools in our
13 toolbox, and we are just trying to use each one
14 appropriately for each particular situation.

15 Q. And I am trying to explore what tools you
16 did use. That is what I am getting at with these
17 lines of questioning with you.

18 A. Okay.

19 Q. Have you been trained that as -- a police
20 presence can escalate a veteran who may already be
21 experiencing difficulties?

22 A. Yeah. It could also deescalate it.

23 Q. Sure.

24 A. Yeah.

25 Q. Sure.

1 So what training have you received to be
2 able to distinguish in all of these different
3 variables how to figure out what is going on with
4 that veteran and how to respond appropriately?

5 A. Well, we have had veterans come in and
6 talk to us specifically during that CIT training
7 but --

8 Q. Was that before the Babb incident?

9 A. Yeah.

10 Q. Okay. And tell me what they told you?

11 A. I don't remember exactly. I know it had a
12 lot to do with veterans having vast reactions to
13 different kind of responses all the way from us
14 pushing that is not good and us leaving, which is
15 not good either. So certainly a police presence
16 could worsen a person in crisis, but there is a lot
17 of other factors involved.

18 Q. Okay. So what I would do in trial with
19 you is try and walk through the details of how the
20 situation was evolving in order to understand what
21 decisions you made considering all these variables
22 you have just explained to me, and you have told me
23 at some point you were considering withdrawing from
24 the scene. And that -- I think you have already
25 told me that you were going to see if there had been

1 a shot fired out of the windows. Was that going to
2 be the decision -- the factor that would decide
3 whether you withdrew?

4 A. Along with all of the other things we had
5 learned earlier, yeah.

6 Q. Tell me what you mean by that.

7 A. So initially, we didn't know whether there
8 was somebody else in the house. If somebody had
9 fired a round in the house, that is very important
10 to us. Once we got Mr. Antonini out of the house,
11 that was a big -- a big part of our decision-making
12 process. When he told us that he was the only one
13 in there and he didn't hear the shot -- very
14 regularly people don't hear that. It is -- I don't
15 know why. He was sleeping. He heard us. I don't
16 know whether or not he heard the shot. That is --
17 but again, that is another little piece, so we are
18 putting those pieces together.

19 Q. Uh-huh.

20 A. I asked him specifically, "What do you
21 think of us leaving?" And he was shocked, dismayed,
22 and, quite frankly, he was using some very colorful
23 language of why we should not.

24 And even with all that, we would not have
25 just completely left the area. We would have still

1 tried to talk to maybe the therapist, get on the
2 line with Mr. Babb. But we certainly would have
3 moved police officers into a safer location.

4 So those were the -- with all those pieces
5 of information and the fact that, once we get eyes
6 on every side of the house and see that there is no
7 bullet hole coming out of a window, with those
8 particular factors in that incident, yes, absolutely
9 we would have backed away.

10 MR. SCHMIDT: Can we take a break when
11 you are --

12 MS. BURROWS: Yeah.

13 MR. SCHMIDT: Well, when you are done
14 with this line of questioning. You can --

15 THE VIDEOGRAPHER: Well, I have about
16 five minutes.

17 MS. BURROWS: Well, let's take a break
18 now then.

19 MR. SCHMIDT: Okay.

20 THE VIDEOGRAPHER: Time is 3:40. We
21 are off record.

22 (Recess: 3:40 to 3:57 p.m.)

23 THE VIDEOGRAPHER: We are on record.
24 Time is 3:57.

25 BY MS. BURROWS:

1 Q. Okay. Let's pick it up where we left off.

2 A. Okay.

3 Q. Which I don't remember where exactly we
4 were.

5 But you indicated that your next step to
6 make the decision to retreat or not -- and I
7 understand you weren't going to completely leave the
8 scene, but you were going to retreat.

9 A. Uh-huh.

10 Q. What was your goal in retreating?

11 A. Just to put our officers in a better
12 position where they weren't exposed. At that point,
13 we would have known that there wasn't a huge risk to
14 the community if we didn't think that he had shot
15 out and that he was just going through a mental
16 crisis, that that sort of -- that very extreme
17 criminal act of shooting outside of the house to
18 where somebody could have gotten hurt, that -- when
19 we would have realized that didn't happen, we would
20 have backed out and seen if we could have gotten him
21 the resources that he needed as far as a mental
22 health evaluation or -- and then who knows? If
23 there is a chance we couldn't have seen a shot and
24 then at some point we got information that there
25 was -- somebody did see it or something could have

1 changed where we could have went back, so -- but
2 just the information we had at that moment, if we
3 had seen the windows, we would have backed out.

4 Q. And you hadn't gotten to the point to have
5 officers check for the windows?

6 A. Not on all sides.

7 Q. What windows had you checked, if any?

8 A. I don't remember exactly which ones they
9 had seen. We had seen movement in lots and lots of
10 windows.

11 Q. Okay.

12 A. And I wanted -- I had to be able to
13 specifically ask officers that were out there, "Do
14 you see a gunshot hole, damage to a window on any of
15 the scenes?"

16 We were also going to look at neighboring
17 houses, because who knows if there was a window open
18 and now it is closed. So we would have looked at
19 the houses around as well to see if there was any
20 damage.

21 Q. Did you assign any officers to interview
22 neighbors to see if they heard a gunshot?

23 A. I don't -- we hadn't gotten that far, no.

24 Q. Was that on your list of things to do, to
25 ask neighbors?

1 A. It could have been. I think that we would
2 probably have done that after we had moved, if we
3 didn't see anything right away, because we knew
4 there was nobody else in there with him.

5 Q. Okay. So do you recall if -- if, in fact,
6 you had asked officers if they saw broken out
7 windows? Do you recall doing that?

8 A. I didn't.

9 Q. You didn't do that yet?

10 A. No. Not specifically, no.

11 Q. Did any officer tell you whether or not
12 they had seen damaged windows?

13 A. No.

14 Q. Were you aware whether or not all your
15 officers knew that there was a suspected gunshot
16 from the house?

17 A. From -- if they had seen or heard the
18 original dispatch, I would have made that
19 assumption.

20 Q. When officers started arriving, did you
21 give them any additional briefing or information on
22 the call?

23 A. No.

24 Q. Were you then expecting that they got
25 their information from dispatch?

1 A. Yeah, or the computer on their call -- in
2 their car as they are responding or just before --
3 just when they get there, to like go through the
4 rest of the details before they get out.

5 Q. Did anyone ask you to get -- fill them in
6 on details upon their arrival at the scene?

7 A. I don't -- I don't remember. I don't
8 think so.

9 Q. All right. Now, I know from various
10 witnesses that Mr. Babb, as you have noted, was seen
11 in windows. Do you remember which window he was
12 seen in?

13 A. I think Vinje saw him in a downstairs
14 window, and then he was seen in upstairs windows by
15 various officers. I don't remember which.

16 Q. Where was Vinje to be able to see the
17 downstairs windows?

18 A. He was standing on the side of the
19 BearCat.

20 Q. And he could see the downstairs windows
21 from standing on the ground?

22 A. Yeah. I -- I assume so. I remember
23 hearing that on the radio traffic.

24 Sometimes officers will maybe expose
25 themselves a little bit more than necessary, so I

1 don't know if he was -- if he was looking -- how far
2 he was looking or where exactly he was standing. I
3 just remember hearing that in the dispatch tapes
4 when I had reviewed those.

5 Q. I don't remember him telling me that he
6 ever moved up to have a good view of the front of
7 the house.

8 A. He wouldn't have moved up. He would have
9 maybe moved laterally.

10 Q. Did you move around in front of that
11 driveway to see if you could see better?

12 A. No. I was standing in the back of the
13 BearCat for most of the time.

14 Q. Okay. Where are we here? So this angle
15 in this picture on Exhibit 41, again, is taken with
16 the BearCat camera that we talked about earlier.

17 A. Uh-huh.

18 Q. And I know that this is a slightly
19 elevated position.

20 A. Uh-huh.

21 Q. Of this -- what this picture is depicting,
22 is this what you could see from inside the BearCat?

23 A. I don't know. I was never inside looking
24 out the front window. But if it is a picture of the
25 camera that is coming out the front, I would assume

1 so, but I couldn't -- I wasn't -- I wasn't there. I
2 wasn't in the front seat looking at this vantage
3 point.

4 Q. No. You did look at the front of the
5 house, at least from some vantage point. Correct?

6 A. As I am kind of walking around, I may have
7 peeked around at some point, yeah.

8 Q. Okay. Could you point and show me what
9 you could see when you were walking around and
10 peeking at the house?

11 A. I don't remember. That is really
12 difficult to say. I mean, we are -- we are in a --
13 in a situation where we are trying to stay behind a
14 big piece of armor so as not to get shot. What --
15 when we are looking around, we are just trying to
16 kind of get our bearings of where exactly -- what
17 something could be.

18 So as I am standing kind of in the back, I
19 might peek around and look. I could see kind of the
20 outline of the house, the cars, the fences, but
21 specifically recalling what exactly I was -- it was
22 just trying to get some situational awareness.

23 Q. Well, when we started this discussion, you
24 said you couldn't see anything of the downstairs.

25 A. Not inside of the house --

1 Q. Well --

2 A. -- certainly.

3 Q. -- in this picture, which is from the
4 BearCat, you can see the fence line here.

5 A. Uh-huh.

6 Q. Is that correct?

7 A. Yeah.

8 Q. And you can see the doorway here?

9 A. Yeah.

10 Q. Could you see that much of the downstairs
11 from standing outside on the ground?

12 A. Without standing back there, I couldn't
13 say for sure.

14 Q. Well, earlier you could remember that you
15 couldn't see the downstairs windows.

16 A. Well, I couldn't see inside of them.

17 Q. Well, could you see them at all?

18 A. I am sure I could see the outline of part
19 of it.

20 Q. Okay. Exhibit 40 is pointing to the door.
21 Could you see that much of the door opening from
22 standing outside?

23 A. This vantage point --

24 Q. Uh-huh.

25 A. -- is from the front of the BearCat.

1 Q. How do you know that?

2 A. Well, you told me.

3 Q. It is from the -- this is a still shot
4 from the BearCat video.

5 A. Correct. And the BearCat video camera is
6 in the front windshield.

7 Q. Yes.

8 A. Okay. So I am assuming that is the front
9 of the BearCat.

10 Q. Okay.

11 A. So what I'm saying is is being behind it
12 in a complete different angle, I can't exactly
13 remember exactly what I saw. So being behind it,
14 you are at a different angle from all these
15 positions, so it is kind of -- it is really
16 difficult to say. This is not the view I was
17 looking at.

18 Q. When Mr. Babb came to the door the second
19 time, could you see him?

20 A. No. I was standing behind the BearCat.

21 Q. What were you doing behind the BearCat?

22 A. Trying to figure out where people were,
23 gather information, trying to call command staff,
24 trying to formulate a plan on how exactly we were
25 going to deal with this, doing all those sorts of

1 things. There is a lot of stuff going on.

2 Q. And at that point when you are behind the
3 BearCat, Kidd is on the roof, Stutesman is in the
4 turret. Where did you understand the rest of your
5 officers were located?

6 A. Barnes and Farley were somewhere to our
7 north, and the team that was at the BearCat was with
8 me at the BearCat. And Clark was on the back side
9 of the house or the west -- it would be the west
10 side, and eventually Warden showed up.

11 Q. Now, this exhibit -- your report is
12 Exhibit forty what?

13 A. 3.

14 Q. 43?

15 A. Uh-huh.

16 Q. Is this a fair and accurate statement of
17 what you told the investigator?

18 A. Yes.

19 Q. Is there anything in here that you felt
20 was not completely accurate or that you would want
21 to modify now?

22 A. I don't believe so.

23 Q. Okay. You arrived -- you have testified
24 you arrived before the BearCat did. And I am sorry
25 if I have already asked you this question. I

1 sometimes forget what I ask.

2 A. Uh-huh.

3 Q. From the time you first arrived until the
4 BearCat arrived, did you hear Mr. Babb yell or
5 scream anything outside of the -- from inside
6 outside?

7 A. I don't remember.

8 Q. Do you remember him yelling or screaming
9 inside the house? Any banging, any noises like
10 that?

11 A. There were certainly yells and -- while we
12 were there. Whether that happened before the
13 BearCat got there or not, I don't recall.

14 Q. You know -- you know what my ultimate
15 question is. Do you think the BearCat may have
16 exacerbated the situation?

17 A. I don't know.

18 Q. And you didn't begin hailing from the
19 BearCat right away. Is that fair?

20 A. Pretty quickly after it got there, I think
21 so.

22 Q. Okay. Did Mr. Babb appear to respond to
23 that loud speaker system, angrily or otherwise?

24 A. I don't know what he was responding to.

25 Q. Well, did his behavior appear to change

1 after you began hailing him?

2 A. I don't know exactly what his behavior was
3 before we got there. We couldn't see in the house.

4 Q. Well, when you got there --

5 A. Uh-huh.

6 Q. -- until the BearCat and then when you
7 started hailing, did his behavior change or modify
8 at all?

9 A. I don't know. I don't know what he was
10 doing in the house.

11 Q. I mean, what you could tell. Was there
12 increased yelling? Was there --

13 A. We were in a position to better see the
14 house, to better keep that incident contained, so
15 once we got closer, certainly we were able to
16 perceive more.

17 Q. Well, forgive me. Let me try this one
18 more time.

19 From the time you arrived, you had a
20 continuous observation post of what was going on
21 there. And you may not have been staring at the
22 house continuously, but -- you were not only
23 managing the scene, but you were trying to keep
24 awareness of where everybody was and what Mr. Babb
25 was doing. Is that fair?

1 A. Absolutely.

2 Q. So at some point, did you notice an
3 escalation in Mr. Babb's behavior?

4 A. His behavior escalated probably at the
5 point when the therapist was saying that it did and
6 called the police.

7 Q. Well --

8 A. I don't know what was going on inside of
9 the house. I really don't. When we were able to
10 move up and he was yelling and screaming -- I don't
11 know whether or not that was before we moved the
12 BearCat up or not. It certainly was while the
13 BearCat was up there. I don't remember -- I
14 wouldn't say that that is what pushed it, because I
15 don't know -- I am not -- I don't know what the
16 thought process was there.

17 Q. That is why I didn't ask you that question
18 that way. I am asking what you observed, including
19 hearing --

20 A. Sure.

21 Q. -- seeing. So did you observe through any
22 of your senses a change in Mr. Babb's behavior once
23 the BearCat got there?

24 A. I don't know.

25 Q. Okay. Would that have been something that

1 would have been important to you at the time,
2 Mr. Babb's change in manner or demeanor?

3 A. Not particularly.

4 Q. Well, aren't you looking at someone who
5 may be in crises?

6 A. Yeah. I am also trying to determine
7 whether or not a shot was fired outside of the house
8 to keep the community as a whole safe. So certainly
9 his demeanor is going to be part of the decision
10 process, but we are also there to serve a purpose in
11 that that is our job function.

12 Q. So you are worried about whether a shot
13 had been fired outside the house.

14 A. Correct.

15 Q. That is what you just told me. What did
16 you determine to determine if that had happened?
17 What did you do?

18 A. We were trying to look around the house.

19 Q. You said you didn't start doing that.

20 A. I didn't give the specific order.

21 Q. Okay. And that came -- that hadn't come
22 by the time the shot had fired. Correct?

23 A. No.

24 Q. So prior to the shot being fired, what
25 steps did you take to decide -- to determine whether

1 a shot had been fired?

2 A. We were -- I was looking around the house,
3 and I assume the other officers were too.

4 Q. But you said you couldn't see very much of
5 the house. What could you see?

6 A. I could see the other places around it. I
7 could see the other houses.

8 Q. Okay. So you were looking at --

9 A. I was just trying to do -- I was trying to
10 do about 50 different things.

11 Q. I get that.

12 A. Officers act kind of autonomously
13 sometimes -- most of the time, because I don't give
14 specific orders. What we give is police officers
15 training to be able to do the job that we need them
16 to do. The reason I would have specifically asked
17 that was just to clarify it to make sure that --
18 again, we are trying to keep everybody safe,
19 including the incident at the house, to try to
20 figure out what was going on.

21 Q. So if you don't specifically ask officers
22 to do a specific task, how do you get things done?

23 A. Well, we train officers.

24 Q. So they are supposed to automatically know
25 to look at these windows to see if they have been

1 shot through?

2 A. Absolutely.

3 Q. Okay. Did any of them call in and tell
4 you that they saw shots fired?

5 A. No.

6 Q. Did you try and verify with any officer
7 from their vantage point that they could see a
8 broken window?

9 A. I hadn't gotten to that point yet.

10 Q. Okay. So when you say that you were
11 worried about whether a shot had been fired outside
12 the house --

13 A. Uh-huh.

14 Q. -- what actively had you done as the
15 incident commander to determine whether that had
16 happened?

17 A. I guess I didn't -- I never asked
18 specifically. We were there.

19 Q. I get that.

20 A. We were trying to get into contact with
21 him.

22 Q. I get that.

23 A. We were trying to be able to talk to the
24 therapist. So those are the steps that we were
25 taking.

1 Q. What did you do to try and talk to the
2 therapist?

3 A. I asked dispatch to -- I could try to
4 communicate to the therapist through dispatch.

5 Q. And you said --

6 A. Because he was already on the line with
7 them, and if they already had some rapport, I
8 assumed that maybe she could do it better than
9 anyone that we had on scene.

10 Q. And those were unsuccessful attempts to
11 have dispatch get ahold of the therapist at your
12 request?

13 A. I asked for it.

14 Q. I know. I get that.

15 So Officer Grose gets on the phone with
16 Mr. Babb at one point at least. Did you ask him to
17 ask Mr. Babb if he had fired out of the house?

18 A. I don't remember -- Officer Grose is a
19 negotiator. I don't tell him how to do his
20 negotiations.

21 Q. But if your job is security --

22 A. Sure.

23 Q. -- safety and security of the officers and
24 citizens present, and your --

25 A. Yeah.

1 Q. -- concern --

2 A. Yeah.

3 Q. -- is to find out if a shot has been fired
4 and one of the things you want to do is get contact
5 with Mr. Babb, and Mr. -- Officer Grose did that,
6 did you slip a note, "Can you ask him if he fired a
7 shot?"

8 A. No.

9 Q. "Can you figure this out?"
10 You didn't do that?

11 A. No.

12 Q. Do you remember if Officer Grose asked
13 those questions of Mr. Babb?

14 A. I don't. I wasn't in the front seat.

15 Q. Is that where the call was taking place
16 was the front seat?

17 A. Yeah. This was also before Mr. Antonini
18 had come out, and that was another big factor in
19 this is if there is somebody else in the house.

20 Q. Okay. So besides worrying about whether a
21 shot is fired, are you worried about the safety of
22 the people inside the house?

23 A. Absolutely.

24 Q. So Antonini leaves, and does that concern
25 go away?

1 A. It goes away until we get the information
2 from him that there is nobody else in the house,
3 yeah.

4 Q. Okay. What were your other concerns with
5 what you were doing at the scene that day?

6 A. Mr. Babb's welfare.

7 Q. Mr. Babb's welfare?

8 A. Uh-huh.

9 Q. What were you worried about what Mr. Babb
10 would do?

11 A. Shoot out at officers or other people in
12 the public.

13 Q. Well, how is that Mr. Babb's welfare?
14 That seems to be your concern for neighbors --

15 A. Okay.

16 Q. -- about something Mr. Babb might do.

17 A. Sure.

18 Q. Is that unfair or is it a different --

19 A. No. I -- I guess the question that you
20 asked to start, I think, was going there, and I
21 guess I misunderstood it.

22 Q. Okay. So were you concerned about
23 Mr. Babb's welfare?

24 A. Yes.

25 Q. And what were you worried Mr. Babb would

1 do to jeopardize his own welfare?

2 A. Harm himself.

3 Q. Okay. Now, earlier you had learned that
4 Mr. Babb may have pointed a 9-millimeter at his own
5 head and was threatening suicide. That was the
6 information dispatch gave you. Is that correct?

7 A. As well as he may have shot out the window
8 or in the house.

9 Q. Yeah. And I want to talk about the
10 9-millimeter and the gun to the head for a moment.
11 But you at least had that information from dispatch
12 when you arrived at the scene. Is that correct?

13 A. That was part of it, yes.

14 Q. Did you ever learn from dispatch --
15 because there is some information from the call
16 taker that Mr. Babb had put his 9-millimeter in his
17 truck.

18 A. I don't remember that.

19 Q. Okay. And there were neighbors that saw
20 Mr. Babb actually outside his house after police
21 arrived, and do you remember the front door or a
22 door to his truck being open when you arrived?

23 A. I don't remember.

24 Q. Okay.

25 MR. SCHMIDT: Objection. Assumes

1 facts not in evidence.

2 BY MS. BURROWS:

3 Q. So I have listed three things, and you are
4 watching me write them down here. So you are
5 worried about whether a shot has been fired outside;
6 Mr. Antonini's welfare; Mr. Babb's welfare. What
7 other things were you worried about as an incident
8 commander that day?

9 A. The officers on scene's welfare.

10 Q. Okay. And this may seem obvious, but what
11 concerns did you have for their welfare?

12 A. That they could be shot.

13 Q. By Mr. Babb?

14 A. Correct.

15 Q. Okay. And your concern that they would be
16 shot by Mr. Babb is based upon what information?

17 A. That he may have shot outside of the
18 house.

19 Q. Okay. And as part of your anticipated
20 efforts to determine whether a shot had been fired
21 outside the house, was part of your to-do list to
22 speak to the neighbors then?

23 A. Eventually.

24 Q. Okay. Did you know Mr. Babb before this
25 incident?

1 A. No.

2 Q. Did you know his family?

3 A. No.

4 Q. Now, I need to talk to you a little bit
5 about something that you mentioned earlier, that you
6 were expecting the officers to know what to do in
7 this scene to address your various goals you have
8 outlined for me, and you said that you were relying
9 on their training to know what to do. Is that a
10 fair characterization?

11 A. Sure.

12 Q. Okay. Tell me what you mean by that.
13 What about their -- and again, you are speaking to a
14 noncop who has never done this before. You knew
15 what your officers had been trained to do, so tell
16 me what you were expecting, as the incident
17 commander, for them to know what to do?

18 A. To make observations of what they were
19 seeing.

20 Q. Okay. And did you expect them to make
21 observations of a potential bullet hole or shattered
22 glass?

23 A. That could be one of about a thousand
24 things that they are looking for.

25 Q. And I get that there are a lot, but tell

1 me what comes to your mind as you are thinking about
2 this question. What were you expecting them to
3 observe and pass on?

4 A. Okay. So when they get there, I am
5 expecting them to find a position where they can
6 get -- observe the house. Along with that, they are
7 trying to make sure that nobody else is walking
8 around, that they are not in a position where they
9 can get shot and killed, where nobody else can get
10 shot and killed, where they are looking for
11 evidence, where they are trying to make sure that
12 the house involved that they are looking at is the
13 right house. That is just a start of about a
14 thousand things that they are trying to do, so there
15 is many things that they are trying to look for.

16 Q. And you expected that they were all
17 automatically doing this, because they are trained
18 officers and they are at a complex scene?

19 A. That is part of -- you know, I understand
20 that there is limitations.

21 Q. Uh-huh.

22 A. It is very difficult to do all these
23 things, especially in a compressed timeline.

24 Q. Okay. During -- until Mr. Babb came out
25 of the house that last time --

1 A. Uh-huh.

2 Q. -- did any officer report that Mr. Babb
3 had waved a gun or threatened anybody with a gun?

4 A. I don't believe so.

5 Q. Did -- and there was lots of -- several
6 officers have told me they saw Babb in different
7 windows.

8 A. Yeah.

9 Q. Do you remember any officer telling you
10 that Mr. Babb was in the window with a weapon in his
11 hand or on his person?

12 A. If he had a weapon in his hand, I would
13 assume he may have been shot if it was pointing at
14 us.

15 Q. Well, or he just had a weapon and he
16 wasn't pointing it. Did anybody report that they
17 saw a weapon?

18 A. No.

19 Q. At some point, various officers say they
20 heard Mr. Babb yell things out the window or out the
21 door. Do you remember him yelling anything?

22 A. He yelled some things. I don't remember.
23 I think there was a part of that that I mentioned in
24 here.

25 Q. Yeah. You have "Get out of here" and

1 "Fuck you" or "Fuck off."

2 A. Yes.

3 Q. Did you hear those things? Because they
4 are in quotes in this interview.

5 A. Yes, something similar to.

6 Q. Okay. At some point, though, you did hear
7 a shot?

8 A. Yes.

9 Q. What was the first -- well, let's see, how
10 do I ask this line of questions? Did you see
11 Mr. Babb come to the door?

12 A. No.

13 Q. Did you hear any warnings to Mr. Babb?

14 A. No.

15 Q. And did -- the first notice you had that
16 Mr. Babb came to the door was the shot?

17 A. Yes.

18 Q. Where were you physically located when the
19 shot was fired?

20 A. Standing behind the BearCat.

21 Q. Could you tell where the shot came from?

22 A. No.

23 Q. What went through your mind when you heard
24 that shot?

25 A. I think we are getting shot at.

1 Q. Okay. Did you communicate that on the
2 radio?

3 A. I believe so.

4 Q. And how would you have communicated that
5 in the moment?

6 A. Can I go back and look?

7 Q. Yeah.

8 A. Okay. So at 5:52 there was -- said that
9 there were shots fired, and then we talked about
10 somebody being down at the front door.

11 Q. And did you call out "Shots fired" on the
12 radio?

13 A. I don't think so.

14 Q. Okay. Again, do you remember if you
15 communicated to your officers that you felt you all
16 were being fired upon?

17 A. Yeah. I asked -- I think I asked if
18 anybody had shot.

19 Q. Okay.

20 A. And I didn't get a response. I asked then
21 to do a roll call, I believe, of the officers to see
22 if anybody around had been shot or if we weren't
23 hearing from somebody, and that didn't really
24 happen. And then eventually, from standing back
25 there -- I don't remember who yelled out the back,

1 but it was that Officer Stutesman was the one that
2 took the shot.

3 Q. And you can look at the dispatch records.
4 From the point in time you heard the shot until the
5 completion of that roll call you have just described
6 to me, about how much period -- how long a period of
7 time had elapsed?

8 A. Until the end of the roll call was three
9 minutes.

10 Q. Three minutes?

11 A. Uh-huh.

12 Q. And who is watching the house, if you
13 know?

14 A. Well, people who originally were, so I
15 believe Officer Kidd, Officer Stutesman, people in
16 the front of the BearCat.

17 Q. Who do you think -- which of your officers
18 do you think had the best vantage point of that
19 front door?

20 A. Officer Stutesman.

21 Q. And did Stutesman tell you what he saw at
22 the front door after the shot's fired?

23 A. Not right then, not that I perceived. Not
24 on the radio that I heard.

25 Q. Okay. Did Officer Kidd holler down what

1 he could see?

2 A. Yes.

3 Q. What could he see?

4 A. Somebody down in the doorway.

5 Q. Okay. Could he tell you what physically
6 he could see of the individual in the doorway?

7 A. I don't remember exactly what he said. I
8 was trying to determine whether or not he was -- had
9 been down from a shot, a self-inflicted gunshot
10 wound, or he was down in a position to attempt to
11 ambush us as we came back out, as we move up.

12 Q. You didn't know if he was on his belly
13 or --

14 A. I didn't. I was trying to figure that
15 out.

16 Q. And was Kidd helping you figure out --

17 A. We were trying to. It was difficult.

18 Q. Okay. Okay. That makes Kidd's testimony
19 a little clearer.

20 So about three minutes until the end of
21 the roll call, did you then direct Officer Pieske to
22 drive up to the front door?

23 A. Not until we found out that it was our
24 shot.

25 Q. Okay. Was that a little additional time

1 after the roll call?

2 A. Yes.

3 Q. So what is going on in that three minutes
4 that you are doing the roll call?

5 A. Trying to figure out whether or not he is
6 down in a position of trying to ambush us, if he is
7 down from a self-inflicted gunshot wound, or if he
8 is down from the wound that came from us.

9 Q. Was the radio silent? Was everybody kind
10 of --

11 A. No.

12 Q. Okay. Everybody is chattering?

13 A. Yes.

14 Q. Now, I have heard from different witnesses
15 that there was a moment of like a pause.

16 A. Yeah. Sure.

17 Q. People are confused what is going on?

18 A. Yeah.

19 Q. Do you know about how long that took
20 place?

21 A. I don't remember. Again, it would be very
22 clear on the radio traffic.

23 Q. Were you guys using a different channel
24 than the main dispatch channel?

25 A. No.

1 Q. Was that channel 1 that you were using?

2 A. Yes.

3 Q. Okay. Nobody ever switched over to a
4 different channel?

5 A. No.

6 Q. Okay. Were there any combat veteran
7 officers present at the scene that day, if you know?

8 A. I don't.

9 Q. Okay.

10 A. I don't think -- I don't know. I don't
11 think so.

12 Q. I think I am just about done.

13 A. Okay.

14 Q. Have you -- did you -- oh, I do know. I
15 have to do all of the standard questions about who
16 you talked to and when you talked to them and
17 whether you guys exchanged information.

18 Did you speak to any of the officers who
19 were at the scene after the incident?

20 A. At the debrief.

21 Q. When was the debrief? I think you said it
22 was --

23 A. Six months or so after.

24 Q. Okay. What was the point of the debrief
25 six months after the incident?

1 A. To talk about police tactics.

2 Q. And were there tactical decisions that you
3 made that were discussed at this debrief?

4 A. Absolutely.

5 Q. And were there some suggestions made that
6 maybe different tactics could have or should have
7 been used?

8 A. With what we had available at the time,
9 no.

10 Q. None of your people evaluating it said
11 that you could have done anything differently?

12 A. No.

13 Q. Okay. Were there any changes made to how
14 critical incidents are handled as a result of this
15 incident?

16 A. It started a conversation internally that
17 has actually been going on externally in the police
18 world for a long time.

19 Q. What conversation is that?

20 A. About how to deal with armed, barricaded
21 subjects.

22 Q. Any changes in how you deal with veterans?

23 A. We have -- other than some people wear
24 veterans tags, no.

25 Q. No other changes in dealing with --

1 A. I don't believe so.

2 Q. -- combat veterans?

3 A. No.

4 Q. When you say there were some discussions
5 about dealing with armed, barricaded suspects, what
6 changes or what discussions were going on that you
7 can recall?

8 A. Well, there hasn't been any changes that
9 have been made. It is a discussion that starts at
10 the top, including our chief, and moves down
11 policy-wise.

12 Q. Well, has there been any discussions about
13 making changes or adjustments to tactics?

14 A. No.

15 Q. Your department is determined that you
16 handle barricaded suspects completely well now?

17 A. That on the day of that incident, the use
18 of force board review said that we handled it as we
19 could have with everything that we had available to
20 us at the time properly.

21 Q. Well, my question was following up to your
22 question -- your answer about discussions --

23 A. Yeah.

24 Q. -- about how to handle barricaded
25 suspects.

1 A. Sure.

2 Q. I am not talking about the Brian Babb
3 incident per se.

4 A. Okay.

5 Q. Do you know whether there have been
6 discussions about making adjustments or changes to
7 how your department responds to barricaded suspects?

8 A. Absolutely there has been discussions, but
9 nothing -- I have been part of those where there is
10 committees and whatnot, and there has -- we are
11 talking to get other stakeholders involved, but
12 nothing of real significance from what we have done
13 in the past has come about.

14 Q. I don't understand that answer. You
15 haven't made any changes or --

16 A. No significant changes in our policy have
17 been made.

18 Q. And is that because you believe the
19 department feels their policies are perfectly fine
20 as is?

21 A. I can't speak for the department.

22 Q. What about you?

23 A. At the time, I think our policies were --
24 followed standard police practice.

25 Q. Around where? The country or --

1 A. Absolutely.

2 Q. Okay. So I read in the police review
3 report by the chief that some officers went to
4 different cities to learn about how they deal with
5 veterans in crisis. Do you know anything about
6 that?

7 A. I don't.

8 Q. Do you know any training that has occurred
9 since this incident about dealing with veterans in
10 crisis?

11 A. I don't.

12 Q. You said that you reviewed the police
13 chief's use of force review -- or not the chief's.
14 Excuse me. The use of force review.

15 A. Prepared by Lieutenant Bills, I believe.

16 Q. And you have read that?

17 A. Uh-huh.

18 Q. And you believe that it is accurate?

19 A. Absolutely.

20 Q. And you believe it is based on accurate
21 information?

22 A. I do.

23 Q. Okay. Since the incident, this lawsuit
24 was filed, have you spoken with any of the officers
25 who were present on Devos -- Devos Street on

1 March 30th about this lawsuit?

2 A. No.

3 Q. Have you talked to any of the officers I
4 have already deposed before today about their
5 deposition testimony?

6 A. No.

7 Q. You haven't attended any of the prior
8 depositions.

9 A. I have not.

10 Q. May I ask way?

11 A. Well, on Monday my kid was sick, throwing
12 up all over the house, so I felt like that was bit
13 more important at the time, and last week we were in
14 a SWAT training out of town, and the week before
15 that I was dealing with a hasty SWAT event or a
16 preplanned SWAT event --

17 Q. Okay.

18 A. -- so I was unavailable.

19 Q. All right. I -- hang on a second. Sorry
20 about that.

21 MS. BURROWS: You have already taken
22 your microphone off. That is passive-aggressive for
23 telling me I am done.

24 BY MS. BURROWS:

25 Q. Hang on just a second. I want to look at

1 one thing, and then I think I am done with you.

2 Exhibit 9 is Lieutenant Bills' Deadly
3 Force Review Board report. Is that the document you
4 reviewed and we talked about?

5 A. Yeah.

6 Q. All right.

7 A. Yes.

8 Q. Did you review any policies or procedures
9 prior to your deposition today?

10 A. I read it. I read this a couple days ago.

11 Q. The -- you are putting your hands on the
12 whole notebook. Just Exhibit 9?

13 A. I read this use of force document.

14 Q. What about use of force policies?

15 A. Did I read those? I didn't go through
16 those.

17 Q. Okay. That is what I am asking.

18 A. Okay.

19 Q. Any general orders or policies, protocols,
20 anything --

21 A. No.

22 Q. Okay. I have no more questions. Thank
23 you so much.

24 MR. SCHMIDT: Let's take a break. I
25 think I have got a couple questions.

1 THE VIDEOGRAPHER: Time is 4:31. We
2 are off record.

3 (Recess: 4:31 to 4:36 p.m.)

4 THE VIDEOGRAPHER: Okay. We are on
5 record. Time is 4:36.

6
7 EXAMINATION

8 BY MR. SCHMIDT:

9 Q. All right. Sergeant McAlpine, I want to
10 ask you a question about Exhibit 43, which is your
11 report, or a report of your interview. I want to
12 ask you just about one part of it.

13 On page 2 -- or page 3, I am sorry, in the
14 middle of the page -- actually, it is page -- yeah.
15 It is the second page. It is numbered 3.

16 MS. BURROWS: What is the Bates stamp
17 page?

18 MR. SCHMIDT: 722.

19 MS. BURROWS: Okay.

20 BY MR. SCHMIDT:

21 Q. It says, quote (reading): Once
22 the roommate was removed from within the
23 house, Sergeant McAlpine, Sergeant Vinje,
24 and others higher up the chain of command
25 were trying to determine if they were going

1 to simply leave. The idea of leaving Babb
2 in the home alone was weighed against the
3 possibility of further -- of forcing the
4 confrontation. Sergeant McAlpine's goal was
5 to resolve the situation without further
6 conflict or confrontation.

7 When Sergeant McAlpine mentioned to Antonini
8 that they might simply leave in the
9 residence, Antonini replied, quote: Are you
10 kidding me? This guy is crazy. He has got
11 weapons. He is out of it. I don't feel
12 safe going back inside, unquote.

13 Now, you were asked whether this report is
14 accurate. You said it was. I want to ask you about
15 one thing.

16 You said earlier in the deposition that
17 when Mr. Antonini was responding to whether you
18 should simply leave, he used profanity. Is that
19 right?

20 A. Correct.

21 Q. Okay. Do you remember what he said, what
22 the profanity was?

23 A. He said something to the effect of, "You
24 have got to be fucking kidding me."

25 Q. Okay. And then at the end of the

1 deposition, Ms. Burrows asked you whether you had
2 talked to any of the other officers about the
3 lawsuit or the depositions, and you said no. Right?

4 A. (Shakes head.)

5 Q. You need to --

6 A. Yes. I said no.

7 Q. Do you want to clarify that answer?

8 A. I have spoken to the case in front of you
9 with the other three.

10 MR. SCHMIDT: Okay. All right. That
11 is all I have.

12 MS. BURROWS: I have nothing further.
13 Thank you so much.

14 THE WITNESS: Thank you.

15 THE VIDEOGRAPHER: Okay. This ends
16 the video deposition of Malcolm McAlpine on
17 October 18, 2017. Time is --

18 MR. SCHMIDT: Oh.

19 THE VIDEOGRAPHER: We are still on the
20 record.

21 MS. BURROWS: You're done.

22 MR. SCHMIDT: I forgot one thing.

23 THE VIDEOGRAPHER: Still on record.

24 MR. SCHMIDT: All right. We will
25 reserve his right to read and sign his deposition.

1 THE VIDEOGRAPHER: Okay. Now we are
2 ready?

3 MR. SCHMIDT: Yes.

4 THE VIDEOGRAPHER: Okay. Okay. The
5 time is 4:39. We are off record.

6 (The deposition was concluded at
7 4:39 p.m.)
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1 | State of Oregon)
 |) ss.
 2 | County of Lane)

3 I, Christine Oljace, CSR-RPR, a Certified
4 Shorthand Reporter for the State of Oregon, certify
5 that the witness was sworn and the transcript is a
6 true record of the testimony given by the witness;
7 that at said time and place I reported by stenotype
8 all testimony and other oral proceedings had in the
9 foregoing matter; that the foregoing transcript
10 consisting of 127 pages contains a full, true and
11 correct transcript of said proceedings reported by
12 me to the best of my ability on said date.

13 If any of the parties or the witness requested
14 review of the transcript at the time of the
15 proceedings, correction pages are attached.

16 IN WITNESS WHEREOF, I have set my hand this 6th
17 day of November 2017, in the City of Eugene, County
18 of Lane, State of Oregon.

19

20

21

22 | Christine Oljace, CSR-RPR

23	CSR No. 05-0397
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24	Expiration Date: September 30, 2018
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25

1 Malcolm McAlpine

2 McGowan, et al., vs. Stutesman, et al.

3 October 18, 2017

4

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18 I declare under penalty of perjury that the 127

19 pages referenced above are true and correct except

20 for such corrections as noted. Executed this

21 day of 2017.

22 |.....|

23 Malcolm McAlpine

24

25